

COPY

IN THE CIRCUIT COURT OF  
THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA

CONTINUED DEPOSITION OF DR. IRWIN W. TUCKER

GILDA MIDDLETON, as Personal  
Representative of the Estate of  
WALTER MIDDLETON, Deceased

PLAINTIFF

v.

CASE NO. 95-3923 - DIVISION: H

ARMSTRONG WORLD INDUSTRIES, INC., et al.

DEFENDANTS

ROCCO CUTERI and MARY E.  
CUTERI, his wife

PLAINTIFFS

v.

CASE NO: 95-249 - DIVISION:

U.S. MINERAL PRODUCTS COMPANY,  
A New Jersey Corporation, et al.

DEFENDANTS

LYNN R. STARCHER, a married  
man, and MARY ANN STARCHER  
his wife

PLAINTIFFS

v.

CASE NO. 95-8137 - DIVISION: O

R.J. REYNOLDS TOBACCO COMPANY,  
a foreign corporation;  
BROWN & WILLIAMSON TOBACCO CORPORATION,  
as successor by merger to  
THE AMERICAN TOBACCO COMPANY,  
a foreign corporation;  
PUBLIX SUPER MARKETS, INC.,  
a Florida corporation

DEFENDANTS

DENNIS BYRON, a married man,  
and JOSEPHINE BYRON, his wife

PLAINTIFFS

v.

CASE NO: 97-2773 - DIVISION: F

PHILIP MORRIS INCORPORATED; and  
BROWN & WILLIAMSON, as successor  
by merger to THE AMERICAN TOBACCO  
COMPANY

DEFENDANTS

Property of: Ness, Motley  
Main Pl File Room  
Charleston, SC

BETTY COOGLER as Personal  
Representative of the Estate of  
DONALD J. COOGLER, SR.

PLAINTIFFS

v.

CASE NO. 95-8138 - DIVISION: A

R.J. REYNOLDS TOBACCO COMPANY,  
a foreign corporation;  
PHILIP MORRIS INCORPORATED,  
a foreign corporation;  
BROWN & WILLIAMSON TOBACCO CORPORATION,  
as successor by merger to  
THE AMERICAN TOBACCO COMPANY,  
a foreign corporation;  
WINN-DIXIE STORES, INC.  
A Florida corporation,  
WINN-DIXIE SUPERMARKETS, INC.  
a Florida corporation

DEFENDANTS

---

RUTH D. WILSON

PLAINTIFF

v.

CASE NO. 97-02770 - DIVISION: P

R.J. REYNOLDS TOBACCO COMPANY,  
a foreign corporation;  
BROWN & WILLIAMSON TOBACCO CORPORATION,  
as successor by merger to  
THE AMERICAN TOBACCO COMPANY,  
a foreign corporation

DEFENDANTS

---

EDWARD CARLUCCI as Personal  
Representative of the Estate of  
BETTY CARLUCCI

PLAINTIFFS

v.

CASE NO. 96-01918 - DIVISION: I

R.J. REYNOLDS TOBACCO COMPANY,  
a foreign corporation;  
PHILIP MORRIS INCORPORATED,  
a foreign corporation;  
BROWN & WILLIAMSON TOBACCO CORPORATION,  
as successor by merger to  
THE AMERICAN TOBACCO COMPANY,  
a foreign corporation;  
PUBLIX SUPER MARKETS, INC.,  
a Florida corporation

DEFENDANTS

CAROL C. ROSS, a married  
woman, and LEONARD L. ROSS  
her husband

PLAINTIFFS

v.

CASE NO. 95-7206 - DIVISION: H

LIGGETT GROUP INC.,  
a foreign corporation;  
PHILIP MORRIS INCORPORATED,  
a foreign corporation;  
BROWN & WILLIAMSON TOBACCO CORPORATION,  
individually and as successor by merger to  
THE AMERICAN TOBACCO COMPANY,  
a foreign corporation;  
PUBLIX SUPER MARKETS, INC.,  
a Florida corporation

DEFENDANTS

The continued deposition of DR. IRWIN W. TUCKER  
was taken on behalf of Plaintiffs before Sandra L. Allyn,  
Court Reporter and Notary Public in and for the State of  
Kentucky at Large, at the offices of Brown, Todd & Heyburn,  
3200 Providian Center, 400 West Market Street, Louisville,  
Kentucky, on Tuesday, July 29, 1997, commencing at the  
approximate hour of 9:30 a.m.

Said deposition was taken pursuant to Notice for  
purposes of discovery, for use at trial, and for such other  
purposes as are permitted under the Florida Rules of Civil  
Procedure and other applicable law in the above-styled  
actions now pending before the Hillsborough County Circuit  
Court.

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# EXHIBITS

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(Above-referenced exhibits attached to original and copy transcripts.)

1 DR. IRWIN W. TUCKER,  
2 the deponent herein, having previously been duly sworn, was  
3 examined and testified as follows:

4 EXAMINATION

5 BY MR. VENABLE:

6 Q. Mr. Tucker, this is a continuation of your  
7 deposition that was begun yesterday. Do you understand  
8 that?

9 A. Yes, I do.

10 MR. HENDRICKS: Excuse me, before we get  
11 going, just one housekeeping issue. My understanding is  
12 that there was an agreement in this matter that your  
13 discovery deposition was to begin yesterday at about 1 p.m.  
14 and that our trial deposition was to begin today at 9:30  
15 a.m. You began your discovery deposition yesterday just  
16 after 1 p.m.

17 Dr. Tucker is an 82-year-old man, nearly 83,  
18 although you wouldn't necessarily know it from looking at  
19 him, who worked for B&W during the 1950s. Your examination  
20 sought to take advantage of Dr. Tucker's age by a variety of  
21 tactics, which we described yesterday, as badgering in  
22 nature.

23 Nevertheless, at about 4 p.m. yesterday you  
24 announced that you had finished. I then proceeded to ask  
25 Dr. Tucker questions for about five minutes. These

1 questions were nearly identical to questions which I had  
2 asked of him during a deposition in another case, Broin  
3 case, a copy of which I think you have.

4           After my few questions, you announced that you  
5 would take another three and a half hours of examination.  
6 Somehow, my five minutes had triggered your assessment that  
7 you would need another three and a half hours, a ratio of  
8 approximately 40 to 1.

9           Now, I want to inquire of you if you could tell  
10 me if it's your intention to proceed with three and a half  
11 hours, or thereabouts, of questioning of Dr. Tucker this  
12 morning.

13           MR. VENABLE: First of all, let me take  
14 exception to any characterization that any of the questions  
15 that I may have asked Mr. Tucker or any way in which I asked  
16 them took advantage of him in any way whatsoever.

17           Secondly, there was no agreement that we would  
18 conclude the discovery deposition on Monday. In fact, I  
19 specifically wrote to B&W's counsel in Tampa, advising them  
20 that we would make no such agreement, that that would depend  
21 upon how the deposition went.

22           Thirdly, the questions that you in fact asked  
23 Mr. Tucker yesterday afternoon destroyed the concept of the  
24 deposition as being anything but for discovery since you did  
25 your entire trial testimony, which you've just

1 acknowledged. So therefore, we now must, in effect,  
2 complete our deposition by now investigating and going into  
3 all the issues that we would go into in your trial  
4 deposition since you in fact have now performed that  
5 deposition. So I won't make any assurance to you of how  
6 long it will take. I will assure you that it will take no  
7 longer than necessary at least on my part.

8 MR. HENDRICKS: Okay.

9 MR. VENABLE: And I will go through it. I  
10 don't think that I'm going to be repetitive, and we'll get  
11 this resolved.

12 MR. HENDRICKS: Thank you. Let me just take  
13 exception to the characterization of my few questions to him  
14 as being our entire direct examination. It certainly was  
15 not our direct examination of Dr. Tucker. It's never been  
16 represented by anyone to be our direct examination of  
17 Dr. Tucker.

18 However, let me say that our assessment of this  
19 tactic of characterizing your need for three and a half  
20 hours of additional examination as being based appropriately  
21 on five minutes of questioning from me is a tactic to abuse  
22 Dr. Tucker, an elderly man, to disrupt our trial deposition,  
23 and to evade the agreement which I believe existed that our  
24 trial deposition would begin this morning.

25 Obviously, Dr. Tucker was in no condition to

1 continue well into the night last night and, therefore, we  
2 adjourned until this time.

3           However, let me say that because of the  
4 significance of Dr. Tucker's trial testimony, I don't want  
5 anyone to be in a position of claiming that you have been  
6 deprived of an opportunity to ask him questions and,  
7 therefore, our position is that you can proceed.

8           MR. VENABLE: I take exception to virtually  
9 everything you said, but I won't continue to argue about it  
10 with you.

11          Q. Mr. Tucker, do you understand that you're still  
12 under oath, sir?

13          A. Yes, I do.

14          Q. And you understand the nature of that oath?

15          A. Yes.

16          Q. On cross-examination you discussed a meeting that  
17 took place at the Plaza Hotel in 1953. Do you recall that  
18 testimony?

19          A. Yes, I do.

20          Q. I want to review with you and make sure who was  
21 present at that meeting. I think you've already told us  
22 that you were at the meeting; is that correct?

23          A. Yes.

24          Q. And was -- I think you may have already told us  
25 that Mr. Hartnett, the president of B&W, was at the meeting?

1           A.    Yes.

2           Q.    Was Paul Hahn, the president of American Tobacco  
3 Company, at the meeting?

4           A.    Yes, he was.

5           Q.    And was a Mr. Hanmer, director of research of  
6 American Tobacco Company, at the meeting?

7           A.    Yes.

8           Q.    What's Mr. Hanmer's first name?

9           A.    Hiram.

10          Q.    Do you know his middle name, by any chance?

11          A.    No.

12          Q.    Did the president of Philip Morris attend the  
13 meeting?

14          A.    My recollection of that is a little hazy.

15          Q.    Do you recall testifying previously that he  
16 attended the meeting?

17          A.    Yes, I thought...

18          Q.    Do you think he was there or not, sir?

19          A.    Yes.

20          Q.    And do you remember his name?

21          A.    Hugh Cullman.

22          Q.    Pardon?

23          A.    Hugh Cullman.

24          Q.    Could you spell it for us, if you could? I  
25 didn't catch the first name.

1           A.    Hugh, H-u-g-h.  
2           Q.    H-u-g-h.  Cullman?  
3           A.    Yes.  C-u-l-l-m-a-n.  
4           Q.    Thank you, sir.  
5                   Was Robert DuPuis, the director of research at  
6 Philip Morris, in attendance at that meeting?  
7           A.    Yes.  
8           Q.    Did the president of R.J. Reynolds also attend  
9 that meeting?  
10          A.    Yes.  
11          Q.    Do you recall his name?  
12          A.    No.  
13          Q.    Did Grant Clarke, the research director for R.J.  
14 Reynolds, attend that meeting?  
15                   MR. SCHROEDER:  Objection; form.  
16          Q.    Do you recall whether or not a research director  
17 from R.J. Reynolds attended the meeting?  
18          A.    I'm not sure he was research director, but he  
19 represented the technical.  
20          Q.    You recall that a technical person was at the  
21 meeting from R.J. Reynolds?  
22                   MR. SCHROEDER:  Object to form.  
23          A.    Yes.  
24          Q.    Do you recall the name of the technical person  
25 who attended the meeting for R.J. Reynolds?

1           A.   Grant Clarke.

2           Q.   Did the president of Lorillard Tobacco attend the  
3 meeting?

4           A.   Yes.

5           Q.   And did Hugh Parmele, the research director of  
6 Lorillard, attend the meeting?

7           A.   Yes.

8           Q.   At the time the meeting took place, if I recall  
9 correctly, it was December of 1953, correct?

10          A.   Yes.

11          Q.   At the time that that meeting took place, were  
12 the presidents aware of Dr. Wynder's research which had been  
13 published concerning cigarettes and lung cancer?

14          A.   Yes.

15               MR. SCHROEDER:  Objection.

16          Q.   And you personally read Dr. Wynder's studies?

17          A.   Yes.

18          Q.   Do you recall having read a study published in  
19 the Journal of the American Medical Association entitled  
20 "Tobacco Smoking as a Possible Etiologic Factor in  
21 Bronchogenic Carcinoma" published by Dr. Wynder in 1950?

22          A.   Yes.

23          Q.   Do you recall the following statement being made  
24 in that paper by Dr. Wynder:  "The suggestion that smoking,  
25 and in particular cigarette smoking, may be important in the

1 production of bronchogenic carcinoma has been made by many  
2 writers on the subject, even though well-controlled and  
3 large-scale clinical studies are lacking"?

4 Do you recall that?

5 A. If it was in that article, I did at the time.

6 Q. Do you recall these conclusions by Dr. Wynder  
7 after he set forth his study in that article: "Excessive  
8 and prolonged use of tobacco, especially cigarettes, seems  
9 to be an important factor in the induction of bronchogenic  
10 carcinoma"?

11 MR. HENDRICKS: I object to the use of the  
12 document in questioning Dr. Tucker without having marked it  
13 as an exhibit or showing it to Dr. Tucker.

14 Q. You may answer, Doctor. Do you recall that  
15 statement being made?

16 A. What statement?

17 Q. The following statement: "Excessive and  
18 prolonged use of tobacco, especially cigarettes, seems to be  
19 an important factor in the induction of bronchogenic  
20 carcinoma."

21 A. Yes.

22 Q. Do you recall the following conclusion also being  
23 made by Dr. Wynder: "Among 605 men with bronchogenic  
24 carcinoma, other than adenocarcinoma, 96.5 percent were  
25 moderately heavy to chain-smokers for many years"?

1 Do you recall that statement being made in the  
2 article? You have to answer out loud, sir.

3 A. Yes.

4 MR. SCHROEDER: For point of clarification,  
5 based on his earlier response, it's not clear to me whether  
6 his answer is, "I recall it now" or "I may have read it at  
7 the time." I don't want the record to be unclear about  
8 that.

9 MR. VENABLE: That's fine.

10 Q. Do you recall the following conclusion also being  
11 made by Dr. Wynder: "Three independent studies have  
12 resulted in data so uniform that one may deduce the same  
13 conclusions from each of them"?

14 Do you recall that statement being made?

15 A. If it's in there, I read it, yes.

16 Q. And you read it back in the early 1950s, correct?

17 A. Yes.

18 Q. Do you recall the following statement also being  
19 made in that article --

20 MR. REILLY: Let me interpose an objection  
21 based on that last answer. He's indicated --

22 MR. VENABLE: Is it an objection, counsel,  
23 or is it a speech? I don't mind an objection, but a proper  
24 objection is simply an objection on legal grounds. If  
25 you've got that to make, you absolutely have a right to do

1 it, but you don't have a right to make a speech.

2 MR. REILLY: The answer is, it's a little of  
3 both.

4 MR. VENABLE: Well, it's not proper, then.

5 MR. REILLY: When the witness says, in  
6 response to your last question, that if it's in there he  
7 read it in the '50s, then when you ask him another question  
8 that says, "Do you remember this" --

9 MR. VENABLE: Counsel, you are free to ask  
10 him all the questions you want to.

11 MR. REILLY: Object to the form of the  
12 question.

13 MR. VENABLE: That's fine.

14 Q. Do you recall the following statement also being  
15 made in that article: "In regard to smoking habits, we  
16 considered it particularly essential to learn how much a  
17 patient had smoked formerly, even though he might not smoke  
18 at all or smoke little at the time of the interview. The  
19 reason for this is the well-known existence of a time lag  
20 between the exposure to a carcinogenic substance and the  
21 appearance of cancer"?

22 Do you recall reading that statement?

23 MR. HENDRICKS: Object to the form.

24 MR. SCHROEDER: Same objection.

25 MR. REILLY: Same objection.

1 Q. Do you recall that, Doctor?

2 A. Yes.

3 Q. Do you also recall reading an article published  
4 by Dr. Wynder in the New England Journal of Medicine in  
5 March of 1953 entitled "Cancer of the Lung in Physicians"?

6 MR. SCHROEDER: Objection; form.

7 Q. Do you recall reading that, sir, back in the  
8 early 1950s?

9 A. Yes.

10 Q. Do you recall, sir, the following statement being  
11 made by Dr. Wynder in that article: "During the past two  
12 years, nine separate investigations have presented evidence  
13 that tobacco smoking is associated with the development of  
14 bronchogenic carcinoma"?

15 MR. HENDRICKS: Object to form.

16 Q. You may answer.

17 A. Yes.

18 Q. Do you recall the following statement being made  
19 by Dr. Wynder in that same article: "The close results of  
20 these separate investigations underline evidence that there  
21 is a close association between tobacco and cancer of the  
22 lung"?

23 MR. HENDRICKS: Object to the form.

24 Q. Do you recall that statement, sir?

25 A. No.

1 Q. You have to answer out loud.  
2 MR. HENDRICKS: He did; he answered it out  
3 loud.  
4 MR. VENABLE: Let him answer it so I can  
5 hear him, if you don't mind.  
6 Q. What was your answer, sir?  
7 A. My answer was no.  
8 Q. You don't recall that statement being made?  
9 A. No.  
10 Q. If that statement was made in this article, would  
11 you have read it in the early 1950s?  
12 A. Yes.  
13 Q. You also recall, sir, reading Dr. Wynder's  
14 mouse-painting research that was published in 1953 entitled  
15 "Experimental Production of Carcinoma with Cigarette Tar"?  
16 MR. SCHROEDER: Objection.  
17 A. Yes.  
18 Q. Do you remember this statement being made by  
19 Dr. Wynder in that article: "In 1950 Wynder and Graham, on  
20 the basis of a clinical and statistical investigation,  
21 presented evidence of a real association between lung cancer  
22 and smoking, especially of cigarettes. These data have been  
23 well-substantiated by a large-scale British study by Doll  
24 and Hill. Both studies showed that the risk of developing  
25 cancer of the lung increases in direct proportion to the

1 amount of smoking. Ten other recent studies reached similar  
2 conclusions"?

3 Do you recall reading that?

4 MR. HENDRICKS: Object to the form.

5 Q. Do you recall reading that in Dr. Wynder's  
6 article in 1953, sir?

7 A. Yes.

8 Q. Do you recall, sir, the following statement being  
9 made in that same article: "In 1952, the Council of  
10 International Organizations of Medical Science convened a  
11 symposium on the epidemiology of lung cancer and agreed that  
12 the present evidence points to a relationship between lung  
13 cancer and cigarette smoking"?

14 Do you recall that?

15 MR. HENDRICKS: Object to form.

16 A. No, I don't.

17 Q. If that was set forth in Dr. Wynder's 1953  
18 article, would you have read it in 1953?

19 A. I might have, probably did.

20 Q. Sir, was the purpose of the 1953 meeting to  
21 formulate a joint industry response to the medical research  
22 that had found that cigarette smoking was an important  
23 factor in the development of lung cancer?

24 MR. PARRISH: Objection.

25 A. I didn't understand the question.

1 Q. Let me rephrase it, then, sir. Again, I'm  
2 talking about the meeting that took place at the Plaza Hotel  
3 in New York in 1953.

4 Was the purpose of that meeting to formulate a  
5 joint industry response to the medical research that had  
6 found that cigarette smoking was an important factor in the  
7 development of lung cancer?

8 A. Yes, it was.

9 MR. HENDRICKS: Objection; misstates the  
10 facts.

11 Q. How long did the meeting last, sir?

12 A. Two days.

13 Q. Did the presidents who were in attendance in that  
14 meeting discuss various actions the industry could take in  
15 response to the medical research which had been published?

16 A. Yes.

17 Q. Were any of the researchers who had published the  
18 ten studies referenced by Dr. Wynder in his 1953 article,  
19 were any of those researchers invited to the meeting at the  
20 Plaza Hotel in New York in 1953?

21 A. Not to my knowledge.

22 Q. Were any of the doctors -- were any doctors in  
23 attendance at that meeting?

24 A. Are you speaking of M.D.s?

25 Q. Yes, sir, medical doctors.

1 A. No.

2 Q. Were any statisticians present at that meeting?

3 A. No.

4 Q. Were any epidemiologists present at that meeting?

5 A. No.

6 Q. Sir, in 1953, were you aware of any published  
7 research which had found that cigarette smoking did not  
8 cause lung cancer?

9 A. No.

10 Q. Did anyone at the meeting at the Plaza Hotel in  
11 1953 claim that there was published research that showed  
12 that cigarettes did not cause lung cancer?

13 A. Not to my knowledge.

14 Q. At the meeting at the Plaza Hotel in 1953, did  
15 the presidents make any decision to stop manufacturing  
16 cigarettes?

17 A. No, not to my knowledge.

18 Q. Did they make any decision at those meetings to  
19 recall cigarettes that were presently in the marketplace?

20 A. No.

21 Q. You were in attendance at the meetings, weren't  
22 you, sir?

23 A. Yes.

24 Q. Did the presidents even discuss doing either of  
25 those two things; that is, ceasing the manufacturing of

1 cigarettes and/or recalling cigarettes that were currently  
2 in the marketplace?

3 MR. HENDRICKS: Object to the form.

4 A. Not to my knowledge.

5 Q. Let me ask him individually, then.

6 Did the presidents even discuss or consider  
7 ceasing the manufacturing of cigarettes at that meeting?

8 MR. HENDRICKS: Object to the form.

9 MR. SCHROEDER: Objection.

10 A. Not to my knowledge.

11 Q. And did the presidents discuss recalling  
12 cigarettes that were currently in the marketplace at that  
13 meeting in 1953?

14 A. No.

15 Q. At the meeting in 1953, did the presidents decide  
16 to stop promoting the sale of cigarettes by advertising?

17 A. No.

18 Q. Did the presidents decide at that meeting to take  
19 out any advertising to advise people to stop smoking?

20 A. No.

21 Q. Did they even discuss either of those  
22 possibilities?

23 MR. HENDRICKS: Object to the form.

24 MR. SCHROEDER: Object to the form of the  
25 question.

1 Q. You can answer, sir.  
2 A. No.  
3 Q. Did they take any action whatsoever at the 1953  
4 meeting to ensure that cigarettes they manufactured were not  
5 provided or sold to minors?  
6 MR. SCHROEDER: Objection to the form.  
7 A. No.  
8 Q. Did they even discuss the potential health  
9 consequences to children who might use their cigarettes?  
10 MR. HENDRICKS: Object to the form.  
11 MR. SCHROEDER: Objection.  
12 A. No.  
13 Q. When you read Dr. Wynder's papers in 1953, you  
14 were working for Brown & Williamson, correct?  
15 A. Yes.  
16 MR. SCHROEDER: Objection.  
17 Q. And you've told us previously that you would go  
18 to the library on a routine basis at the university medical  
19 school here --  
20 A. Yes.  
21 Q. -- is that correct, in Louisville?  
22 A. (Deponent moved head up and down.)  
23 Q. And that you would look up articles that had to  
24 do with cigarettes and health?  
25 A. Yes.

1 Q. And I think that one of the things you told us  
2 that the way you would identify or find those articles is if  
3 they were cited in another article; is that correct? They  
4 were referred to in another article?

5 A. That would be one way, yes.

6 Q. Sir, did you review the articles that were cited  
7 by Dr. Wynder as being articles that had reached a  
8 conclusion that cigarette smoking was associated with lung  
9 cancer?

10 MR. SCHROEDER: Objection.

11 MR. HENDRICKS: Objection.

12 Q. You would do that, would you not, sir?

13 A. Yes.

14 Q. I want to ask you, sir, if you recall a  
15 publication by Dr. Sadowsky (phonetically) entitled "The  
16 Statistical Association Between Smoking and Carcinoma of the  
17 Lung" published in 1953 and referred to in Dr. Wynder's  
18 study in 1953?

19 A. What are you asking me?

20 Q. I'm asking if you recall it.

21 A. Yes.

22 Q. Do you recall Dr. Sadowsky making the following  
23 statement in that paper: "Second, among all smokers there  
24 is a general tendency manifest in all studies towards an  
25 increased risk in rates with increased quantities smoked

1 daily"? And they're referring to lung cancer, discussion of  
2 lung cancer."

3 MR. SCHROEDER: Objection.

4 Q. Do you recall that statement being made in that  
5 article?

6 MR. HENDRICKS: Object to form and I object  
7 again to the technique of going through these without  
8 showing Dr. Tucker the document, going through these  
9 40-year-old documents and quoting extensively for purposes  
10 of harassing Dr. Tucker.

11 MR. VENABLE: There's no intent to harass  
12 the doctor.

13 Q. Do you recall those statements being made in that  
14 article, Doctor?

15 A. Yes.

16 Q. Doctor, did the presidents who were at the 1953  
17 meeting at the Plaza Hotel take any action to advise  
18 customers that researchers had stated that they could reduce  
19 their risk of lung cancer by reducing the number of  
20 cigarettes smoked each day?

21 MR. REILLY: Objection.

22 MR. SCHROEDER: Objection.

23 MR. HENDRICKS: Objection.

24 A. No.

25 Q. When you were at the meetings, did they even

1 discuss the matter?

2 MR. SCHROEDER: Same objection.

3 MR. REILLY: Same objection.

4 Q. You may answer, sir.

5 A. No.

6 Q. I think you told me yesterday you were familiar  
7 with that study that had been published by Dr. Ochsner. Is  
8 that correct?

9 A. Yes.

10 Q. Do you recall an article by Dr. Ochsner published  
11 in 1953 entitled "The Early Recognition of Bronchogenic  
12 Carcinoma"?

13 A. Yes.

14 Q. Do you recall Dr. Ochsner stating in that article  
15 that the early recognition of bronchogenic carcinoma is  
16 imperative?

17 MR. HENDRICKS: Objection to form.

18 Q. Do you recall that, sir?

19 A. Not specifically.

20 Q. Do you recall -- if that was printed in the  
21 article, would you have read it?

22 A. Yes.

23 Q. Do you recall the following statement being made  
24 by Dr. Ochsner in the article which I've just described:  
25 "Because of the desirability of making a diagnosis of

1 bronchogenic carcinoma even before symptoms present  
2 themselves, "It is recommended that all men past 40 years of  
3 age who have been heavy smokers for a number of years  
4 undergo routine chest X-rays at least every six months and  
5 preferably every three months so that if a lung cancer does  
6 develop it can be detected at a time when the lesion is  
7 still limited to the lung and even before it produces  
8 symptoms"?

9 MR. HENDRICKS: Object to the form and the  
10 technique.

11 MR. SCHROEDER: Objection.

12 Q. Do you recall Dr. Ochsner making that  
13 statement --

14 MR. SCHROEDER: Objection.

15 Q. -- in the article that was published in 1953?

16 MR. HENDRICKS: Objection.

17 Q. You can answer, Doctor.

18 A. I don't recall it specifically, but if it's in  
19 the article it's there.

20 Q. And you would have read it, sir?

21 A. Yes.

22 Q. Did the presidents who were meeting at the Plaza  
23 Hotel in 1953 take any action to advise their customers that  
24 they should have routine X-rays if they were over 40 years  
25 of age?

1 MR. SCHROEDER: Objection.  
2 MR. HENDRICKS: Objection.  
3 A. No, I don't.  
4 Q. Do you recall them even discussing that matter?  
5 MR. HENDRICKS: Objection.  
6 MR. SCHROEDER: Objection.  
7 Q. You can answer, sir.  
8 A. No.  
9 Q. You told us yesterday that while working for both  
10 Liggett and by -- and when you were working for Brown &  
11 Williamson that flavorants were added to the cigarettes. Is  
12 that correct?  
13 MR. SCHROEDER: Objection.  
14 Q. Is that correct, sir?  
15 A. No.  
16 Q. There were no flavorants added to the cigarettes?  
17 MR. REILLY: I object to the form of the  
18 question.  
19 MR. HENDRICKS: As do I, and I also object  
20 on the grounds that this is well beyond the scope of our  
21 examination of Dr. Tucker yesterday.  
22 MR. VENABLE: I'm simply laying a  
23 foundation, counsel. It's one question.  
24 Q. Do you recall -- did they contain flavorants or  
25 not?

1           A.    Yes, they did.

2           Q.    Okay. My question is, at the meeting in 1953 at  
3 the Plaza Hotel, did the presidents take any action  
4 whatsoever to remove flavorants from their cigarettes?

5                   MR. SCHROEDER:  Objection.

6           A.    No.

7           Q.    Did they discuss the matter of removing  
8 flavorants from their cigarettes at that meeting?

9           A.    No.

10          Q.    Did the presidents at the 1953 meeting at the  
11 Plaza Hotel recommend to their customers that they should  
12 switch from cigarettes to cigar smoking?

13          A.    No.

14          Q.    Did they discuss that matter?

15          A.    No.

16          Q.    Did the presidents at the Plaza Hotel in 1953  
17 take any action to recommend to their customers that they  
18 switch from cigarettes to pipe smoking?

19          A.    No.

20          Q.    Did they even consider --

21                   MR. HENDRICKS:  Objection to form.

22          Q.    -- such a recommendation?

23          A.    No --

24                   MR. SCHROEDER:  Same objection.

25          A.    -- not to my knowledge.

1 Q. Did they discuss such a recommendation?

2 A. Not that I recall.

3 Q. At the meeting in 1953 at the Plaza Hotel, did

4 the presidents take any action to remove nicotine from their

5 cigarettes?

6 A. Not to my recollection.

7 Q. Did the presidents at the 1953 Plaza Hotel

8 discuss whether or not they should warn their customers

9 about the health hazards which had been reported in the

10 recent medical literature in 1953?

11 MR. SCHROEDER: Objection.

12 A. No.

13 Q. At the meeting in 1953, did the presidents take

14 action to create the Tobacco Industry Research Committee?

15 A. I don't follow the question.

16 Q. Okay. Let me ask it this way: At the meeting at

17 the hotel, the Plaza Hotel, in 1953, did the presidents

18 create what became known as the Tobacco Industry Research

19 Committee?

20 A. Yes.

21 Q. And the purpose of the Tobacco Industry Research

22 Committee was to combat adverse publicity, correct?

23 MR. HENDRICKS: Objection.

24 MR. SCHROEDER: Object to form.

25 A. No.

1 Q. Well, tell me what the purpose of the TIRC or  
2 Tobacco Institute Research Committee was.

3 A. Was to develop information and the means of  
4 getting the information out to the public.

5 Q. Sir, do you recall giving testimony in the case  
6 of Broin, B-r-o-i-n, et al. v. The Philip Morris Company,  
7 et al., Case No. 91-49738, case pending in Dade County,  
8 Florida, your deposition being taken on June 27, 1997? Do  
9 you recall giving testimony in that case?

10 A. Yes. That was one -- we did it here in  
11 Louisville by telephone.

12 Q. Do you recall on page 23 of that deposition being  
13 asked the following question, line 12: "And what was the  
14 purpose for which -- the purpose the TIRC was formed?"

15 Your answer was, line 15: "The purpose was to  
16 evaluate the publicity, adverse publicity, that was being  
17 generated and to formulate some positive response to it."

18 MR. REILLY: Object to the form of the  
19 question.

20 Q. Do you recall that testimony, sir?

21 A. Yes.

22 Q. Was that accurate testimony when you gave it?

23 A. Yes.

24 Q. So, sir, am I not correct that the purpose of the  
25 TIRC was to combat adverse publicity?

1 MR. REILLY: Same objection; form of the  
2 question. That's improper impeachment to the prior  
3 testimony, if that's what you're attempting to do. The  
4 questions are completely different. That's my objection for  
5 the record. It's proper impeachment.

6 MR. HENDRICKS: I join in that objection.

7 MR. VENABLE: Fine.

8 Q. Now, Doctor, isn't it true that the purpose of  
9 the TIRC was to combat adverse publicity?

10 MR. HENDRICKS: Asked and answered.

11 MR. REILLY: Asked and answered.

12 MR. HENDRICKS: Objection.

13 Q. You may answer.

14 A. No.

15 Q. Was Paul Hahn a member of the TIRC?

16 A. Yes.

17 Q. Was Tim Hartnett a member of the TIRC?

18 A. Yes.

19 Q. And was Hugh Cullman a member of the TIRC?

20 A. Yes.

21 Q. Did the TIRC utilize the public relations firm of  
22 Hill-Knowlton?

23 A. Yes.

24 Q. What was the purpose of having a public relations  
25 firm work for the TIRC if the goal of the TIRC was not to

1 combat adverse publicity?

2 MR. REILLY: Object to the form of the  
3 question.

4 MR. HENDRICKS: Object additionally on the  
5 grounds that these same questions were asked by counsel  
6 yesterday, and now he's going back through the same area  
7 again for purposes of prolonging this deposition and  
8 harassing Dr. Tucker.

9 Q. Go ahead. Answer.

10 A. Would you clarify the question?

11 Q. Yes, sir. What was the purpose of hiring the  
12 Hill & Knowlton public relations firm if the goal of the  
13 TIRC was not to combat adverse publicity caused by the  
14 medical studies that had been published in the early 1950s?

15 MR. SCHROEDER: Object to form.

16 MR. HENDRICKS: Objection.

17 MR. PARRISH: Objection.

18 A. It was to take cognizance of the publicity and to  
19 formulate a response.

20 Q. Yes, sir. That was the purpose of the TIRC,  
21 wasn't it, sir?

22 A. Yes.

23 MR. SCHROEDER: Objection.

24 Q. And, sir, would research that found an  
25 association between cigarette smoking and lung cancer help

1 in combatting the adverse publicity?

2 MR. REILLY: Object to the form of the  
3 question.

4 MR. HENDRICKS: Object.

5 MR. SCHROEDER: Objection.

6 MR. REILLY: This witness has already  
7 rejected the premise of your question.

8 MR. WILNER: I need to make a statement.  
9 Based on my understanding of procedures in effect in the  
10 courts, which this is noticed in Jacksonville, counsels'  
11 repeated attempts to object under the -- by suggesting an  
12 answer or qualification to the witness is not proper, and is  
13 sanctionable. If counsel intends that this deposition is to  
14 be used in the courts of Jacksonville, Duval County,  
15 Florida, then I object to counsels' repeated attempts to  
16 instruct the witness how to answer the question.

17 MR. REILLY: I'm making an objection that  
18 counsel is improperly attempting to impeach the witness,  
19 inappropriately using a deposition. That is hardly  
20 informing the witness as to how to respond to the question.  
21 But counsel's continued effort at injecting the word  
22 "combat" into this testimony, when it's been rejected three  
23 times already by the witness, is inappropriate.

24 Q. Let me rephrase the question.

25 How would the TRIC (sic) utilize research that

1 found an association between cigarette smoking and lung  
2 cancer? How would they utilize such a study?

3 MR. REILLY: Object to the form of the  
4 question.

5 MR. SCHROEDER: Same objection.

6 Q. You can answer.

7 A. (Pause).

8 Q. Would you like for me to phrase it another way,  
9 Doctor?

10 A. Yes.

11 Q. What I'm trying to find out is this, sir: You've  
12 told us that the purpose of the TIRC was to respond to  
13 adverse publicity that had been generated by virtue of  
14 research indicating an association between cigarette smoking  
15 and lung cancer, correct?

16 MR. SCHROEDER: Objection.

17 A. Yes.

18 Q. Okay. And you've told us that the TIRC was  
19 involved in funding research concerning the association or  
20 the lack of any association between cigarette smoking and  
21 lung cancer; is that correct?

22 A. Yes.

23 Q. All right, sir. Now, what I'm asking you is  
24 this: If the TIRC funded research which found, as a  
25 conclusion, that there was an association between cigarette

1 smoking and lung cancer, how would such research be used to  
2 achieve the goal of combatting the adverse publicity?  
3 MR. REILLY: Object to the form of the  
4 question.  
5 MR. SCHROEDER: Objection.  
6 Q. You may answer.  
7 A. I don't know how they would do that.  
8 Q. They couldn't use any such research, could they?  
9 MR. REILLY: Objection to the form of the  
10 question.  
11 MR. HENDRICKS: Objection.  
12 MR. SCHROEDER: Objection.  
13 Q. You may answer. Yes or no, sir?  
14 MR. REILLY: I object to the form of that  
15 instruction.  
16 Q. Explain it if you would like, sir.  
17 A. (Pause)  
18 Q. Can you answer, sir?  
19 A. No.  
20 Q. Now, sir, you served as chairman of what was  
21 known as the ITC, correct?  
22 A. Yes.  
23 Q. The ITC was the Industry Technical Committee; am  
24 I correct?  
25 A. Yes.

1 Q. And back in 1954 you were personally involved in  
2 interviewing doctors to determine if they were appropriate  
3 for service on what became known as the SAB; am I correct?  
4 A. Yes.  
5 Q. And the SAB was the Scientific Advisory Board; is  
6 that correct?  
7 A. Yes.  
8 Q. And the Scientific Advisory Board was created by  
9 the presidents at that meeting in 1953 at the Plaza Hotel,  
10 correct?  
11 A. Yes.  
12 Q. Now, in your -- did you have a search of doctors  
13 to find a chairman?  
14 A. Yes.  
15 MR. HENDRICKS: Let me object to this line  
16 of questions on the grounds that it was entirely gone into  
17 yesterday by counsel. Now we're plowing back through the  
18 same area again, obviously for purposes of prolonging this  
19 deposition and harassing Dr. Tucker. I object.  
20 MR. VENABLE: That's not my purpose,  
21 counsel. I'll proceed.  
22 Q. Did you ever contact Dr. Wynder about serving on  
23 the SAB?  
24 A. No.  
25 Q. Why not?

1           A.   Wynder had already committed himself.  
2           Q.   Because he'd done research on the relationship  
3 between cigarette smoking and lung cancer?  
4           A.   Well, because he -- his pronouncements.  
5           Q.   In reviewing his work, did you believe that he  
6 was knowledgeable concerning the subject of any association  
7 between cigarette smoking and lung cancer?  
8                   MR. SCHROEDER:  Objection.  
9           A.   No.  
10          Q.   You did not believe he was knowledgeable on the  
11 subject matter?  
12          A.   No.  
13          Q.   Did you contact Dr. Richard Doll and --  
14          A.   No.  
15          Q.   Let me finish my question.  
16                  Did you contact Dr. Richard Doll concerning  
17 whether or not he would be willing to serve on the SAB?  
18          A.   No.  
19          Q.   And why didn't you contact Dr. Doll?  
20          A.   He was far away.  
21          Q.   Did you ask him whether or not he would be  
22 willing to travel to take care of whatever duties he might  
23 have at the SAB?  
24          A.   No.  
25          Q.   Was he qualified to serve on the SAB?

1 MR. SCHROEDER: Objection.

2 A. I would think so, yes.

3 Q. Was Dr. Doll invited to attend the meeting of the  
4 presidents in 1953 at the Plaza Hotel?

5 A. No.

6 Q. Did you contact Dr. Alton Ochsner concerning  
7 whether or not he would be willing to serve on the SAB?

8 A. No.

9 Q. And why didn't you contact Dr. Ochsner?

10 A. He had already stated his position.

11 Q. Do you believe that Dr. Ochsner was knowledgeable  
12 in the area of whether or not cigarette smoking was  
13 associated with lung cancer?

14 MR. SCHROEDER: Objection.

15 A. Yes.

16 Q. Did you contact Dr. Hammond and determine whether  
17 he would be willing to serve on the SAB?

18 A. Doctor who?

19 Q. Dr. Hammond. You're familiar with Dr. Hammond's  
20 work, aren't you, sir?

21 A. Tyler Hammond?

22 Q. Yes.

23 A. No.

24 Q. And why didn't you contact Dr. Hammond?

25 A. I don't recall.

1 (Deposition Exhibit 3 marked for  
2 identification.)

3 Q. Let me show you now, sir, what's been marked as  
4 Plaintiff's Exhibit No. 3, ask you to turn to the second  
5 page.

6 MR. SCHROEDER: Have you got something we  
7 can look at?

8 MR. VENABLE: I don't have another one. You  
9 can take it from the witness, if you'd like, and look at it.

10 MR. SCHROEDER: You just have two copies?

11 MR. VENABLE: You're welcome to look at it.

12 MR. SCHROEDER: What is it? Can we identify  
13 it? I don't know what you're talking about.

14 MR. VENABLE: It's a memorandum. You're  
15 welcome to review it all you want to, as long as you want  
16 to, before I ask any questions about it, okay? You're  
17 welcome to look at it as long as you'd like.

18 MR. HENDRICKS: Maybe this would be a good  
19 time to interpose an objection as to this technique. We  
20 have a number of counsel in the room, approximately ten, and  
21 we are now questioning the witness with a document, no  
22 copies have been made for counsel. Obviously the intent is  
23 to prolong the process. Counsel will obviously have to  
24 review the document in order to propound appropriate  
25 objections. We can't do that until we review it. This is

1 going to require more time, more harassment of Dr. Tucker.  
2 Q. Have you had a chance to review that, Doctor?  
3 A. I just read it.  
4 MR. HENDRICKS: Could I see that document,  
5 please?  
6 Q. Let counsel look at it.  
7 MR. HUNT: Perhaps Mr. Venable will allow  
8 other counsel in the room to review his copy of the  
9 document.  
10 MR. VENABLE: I've marked it up, that's why  
11 I'm not.  
12 MR. HUNT: I'm sorry?  
13 MR. VENABLE: My markings are all over it.  
14 That's the only reason I won't.  
15 MR. WILNER: Here's another copy.  
16 MR. SCHROEDER: Since we're taking a quick  
17 break, would it be quicker to burn a quick copy for  
18 everybody? Are you going to ask some questions based on the  
19 document?  
20 MR. VENABLE: I'm going to have a couple of  
21 questions based on the document.  
22 (10:22 BREAK 10:32)  
23 MR. VENABLE: Has anybody not had an  
24 opportunity to review the document?  
25 MR. SCHROEDER: This one?

1 MR. VENABLE: Yes, this memo. It's a page  
2 long.

3 Q. Doctor, first of all, let me ask you to turn to  
4 page 2 of the document. Do you see the handwritten initials  
5 at the bottom underneath -- about halfway down the page,  
6 left-hand side?

7 A. I see them. I don't know what they mean.

8 Q. Was Hiram Hanmer on the ITC?

9 A. Yes.

10 Q. And are the initials HRH?

11 A. It looks like it.

12 Q. Do you recall this memorandum being produced by  
13 Mr. Hanmer?

14 A. No, I don't.

15 Q. Have you seen Mr. Hanmer's initials previously?

16 A. Not that I recall.

17 Q. Let me ask you, sir, did the ITC interview a  
18 Clayton Loosli, L-o-o-s-l-i?

19 A. I don't recall that, no.

20 Q. You don't recall whether or not you interviewed  
21 him for the SAB?

22 MR. HENDRICKS: Objection to form.

23 Q. Say, sir. You don't recall him at all?  
24 Dr. Loosli?

25 A. No.

1 Q. Do you recall a Dr. Lee Clark?

2 A. No.

3 Q. Do you recall a Dr. Leon Jacobson?

4 A. Yes.

5 Q. All right, sir. Did you interview him?

6 A. I believe we did, but my recollection of it is  
7 hazy.

8 Q. All right, sir.

9 Do agree with this statement: "We have,  
10 therefore, come to the conclusion that we must be satisfied  
11 with someone with a reputation for integrity, of reasonable  
12 confidence, and, above all, one who is safe for the  
13 industry"?

14 Was that an accurate statement for your search  
15 for a member of the SAB?

16 MR. SCHROEDER: Objection.

17 A. It wasn't mine.

18 Q. Did you agree with it at the time?

19 MR. HENDRICKS: Objection to form.

20 MR. SCHROEDER: Objection.

21 Q. Did you agree with it at the time? You can  
22 answer, sir.

23 A. What's the question?

24 Q. The question is, at the time that you were  
25 searching for the members of the SAB, would your opinion --

1 would your opinion and position have been the same as that  
2 set forth in this memorandum, specifically, I quote, "We  
3 have, therefore, come to the conclusion that we must be  
4 satisfied with someone with a reputation for integrity, of  
5 reasonable confidence, and, above all, one who is safe for  
6 the industry"?

7 MR. SCHROEDER: Objection.

8 MR. REILLY: Object to the form of the  
9 question.

10 MR. HENDRICKS: Objection.

11 A. I don't know. I dis -- disagree with that.

12 Q. You do disagree with that?

13 A. Yes.

14 Q. What part of it do you disagree with, sir?

15 A. The last part about being safe for the industry.

16 Q. You didn't want to find someone who was safe for  
17 the industry?

18 A. No.

19 Q. What did you want to find, sir?

20 A. Someone who was just fair and uncommitted.

21 Q. Did you exclude doctors from consideration merely  
22 because they smoked cigarettes -- or they didn't smoke  
23 cigarettes?

24 A. No.

25 Q. Did you, sir?

1           A.    No.

2           Q.    Did you exclude doctors from consideration if  
3 they did not smoke cigarettes?

4           A.    No.

5                   (Deposition Exhibit 4 marked for  
6 identification.)

7           Q.    Let me show you what's been marked as Plaintiff's  
8 Exhibit No. 4, sir, and ask you a few questions about that.

9                   MR. HENDRICKS: Could you identify that for  
10 the record?

11                   MR. VENABLE: It's a report on Chicago  
12 interviews by Dr. Irwin Tucker, H. R. Hanmer, and Grant  
13 Clarke.

14                   MR. REILLY: For the record, let me make an  
15 objection. This document states on its margin that it's  
16 produced in Butler v. Philip Morris, et al., and its  
17 dissemination is prohibited by protective order entered by  
18 the court. I'm unaware of another document -- or another  
19 version of this document that doesn't bear that legend. If  
20 you have one so that I'm able to tell that you got it other  
21 than in violation of the Butler protective order, I'll  
22 withdraw my objection. But for the record, I make the  
23 objection that this document apparently is being  
24 disseminated in prohibition of a protective order.

25                   MR. VENABLE: Your objection is noted.

1 MR. HENDRICKS: I join in that objection.

2 MR. SCHROEDER: Same.

3 MR. HENDRICKS: Did counsel give us an  
4 assurance that this document isn't being disseminated in  
5 violation of court order?

6 MR. VENABLE: I don't know what the court  
7 order provides. I didn't receive the document through any  
8 dissemination regarding that court at all.

9 MR. HENDRICKS: I'm frankly concerned that  
10 any answers that he gives to questions relating to a  
11 document that appears to be, on its face, violated --  
12 disseminated in violation of a court order constitutes some  
13 further publication of the document itself, if we're going  
14 to be reading from it, and it causes me concern that by  
15 allowing him to answer any questions about this document  
16 that we're going to be furthering a dissemination of this  
17 document in violation of the Butler order.

18 MR. REILLY: Why don't we take a short  
19 break. We're checking on whether this document's been  
20 produced somewhere other than in Butler.

21 MR. PARRISH: Since I'm sitting in this  
22 room, let the record be clear, I think every counsel has a  
23 duty to explore the circumstances. That's what I think  
24 defense counsel has just suggested, and that's what I plan  
25 to do. If plaintiff doesn't want to do that, then I think

1 they proceed at their own peril.

2 MR. HENDRICKS: Would it be agreeable for  
3 you-all to take a break at this time?

4 MR. VENABLE: We can take a break.

5 (10:40 BREAK 11:14)

6 MR. HENDRICKS: Let me just say that we have  
7 been diligently endeavoring to determine the status of this  
8 document, Plaintiff's Exhibit 4. And at the present time,  
9 it's 11:14 a.m., the status has not been precisely  
10 identified.

11 MR. VENABLE: And in an effort to move  
12 things along, I've advised defense counsel that I will pass  
13 the document to allow them an opportunity to further  
14 investigate that. We'll come back to it perhaps after  
15 lunch. That will give them the time to investigate it  
16 further.

17 MR. HENDRICKS: Thank you very much,  
18 although obviously we could have done this 40 minutes ago.

19 Q. Sir, did the TIRC actually fund research that was  
20 selected by the SAB?

21 A. Yes.

22 Q. Up until 1960, when you left Brown & Williamson,  
23 did you ever see any research which established that  
24 cigarettes did not cause lung cancer?

25 MR. SCHROEDER: Objection.

1 A. No.

2 Q. You told us earlier that at least in 1954 that  
3 TIRC operated out of the offices of Hill & Knowlton --

4 A. Yes.

5 Q. -- the public relations firm.

6 Did that continue to be true through the time  
7 that you were with Brown & Williamson; that is, till 1960?

8 MR. HENDRICKS: I object to the question.  
9 It's a mischaracterization of Dr. Tucker's testimony.

10 Q. Did I mischaracterize your testimony, Mr. Tucker?

11 A. You'll have to state it again.

12 Q. Let me state it again. Did you tell me, sir,  
13 yesterday that the TIRC worked out of the offices of Hill &  
14 Knowlton?

15 MR. SCHROEDER: Objection to form.

16 MR. HENDRICKS: Objection; form.

17 Q. You can answer, sir.

18 A. Yes.

19 Q. All right, sir. My question to you now is -- we  
20 were talking yesterday about the 1953 - '54 time frame, as I  
21 understood it. I want to make sure with you. Did that --  
22 did the TIRC continue to operate out of the offices of Hill  
23 & Knowlton throughout the remainder of the time that you  
24 were with B&W, Brown & Williamson; that is, up until 1960?

25 MR. SCHROEDER: Objection to form.

1 Q. You may answer, sir.

2 A. I'm not sure.

3 Q. All right, sir. Did you ever go to the offices  
4 of the TIRC anywhere other than at Hill & Knowlton?

5 A. No.

6 Q. Were any members of the ITC, the Industry  
7 Technical Committee, paid by the ITC?

8 A. Not to my knowledge.

9 Q. When you performed services on the ITC, were you  
10 doing that as an employee of Brown & Williamson?

11 A. Yes, I was.

12 Q. Were the other members of the ITC working on --  
13 when they were doing work for the ITC -- working on behalf  
14 of whichever company was employing them?

15 MR. SCHROEDER: Objection.

16 A. I believe so.

17 Q. Sir, I'm confused about one thing, and I want to  
18 see if I can't straighten it out. As a member of the ITC,  
19 did you provide the composition of Brown & Williamson  
20 cigarettes to the Scientific Advisory Board?

21 MR. HENDRICKS: Objection to form.

22 A. No, I didn't.

23 Q. You did not.

24 Sir, do you recall giving testimony in the case  
25 of B-r-o-i-n v. Philip Morris, et al., Case No. 91-49738, on

1 June 27 at 11 o'clock in the morning via telephone?

2 A. Yes.

3 Q. On page 24, line 15, you were asked a question:

4 "Was that part of your job as an employee of Brown &

5 Williamson?"

6 Answer: "Yes."

7 Question: "Any other involvement in the Tobacco

8 Industry Research Council?"

9 Answer: "Well, we were also expected to provide

10 information about tobacco and the manufacture and

11 composition of cigarettes as they might relate to questions

12 of health."

13 Question: "Who were you to provide that

14 information to?"

15 "Well, mostly to the Scientific Advisory Board.

16 "And did you do that?"

17 Answer: "Yes."

18 Do you recall that testimony, sir?

19 A. Yes.

20 MR. SCHROEDER: Objection.

21 Q. Was that testimony accurate?

22 MR. HENDRICKS: Objection; improper

23 impeachment.

24 Q. Was that testimony accurate when you gave it,

25 sir?

1           A.    Yes.

2                   MR. SCHROEDER:  Same objection.

3           Q.    Was there certain information regarding the  
4 composition of cigarettes of Brown & Williamson that you  
5 kept secret from the Scientific Advisory Board?

6           A.    I can't recall.

7           Q.    You can't -- can you think of any at the present  
8 time?

9           A.    No.

10          Q.    Mr. Tucker, based upon all of the information  
11 that you have learned from the Scientific Advisory Board and  
12 its research, and elsewhere, as we sit here today, given all  
13 the knowledge that you have, do you believe that cigarette  
14 smoking causes cancer?

15          A.    No.

16          Q.    You previously smoked cigarettes, didn't you,  
17 sir?

18          A.    Yes.

19          Q.    And when did you start smoking?

20          A.    About nineteen -- when I was 20 years old.

21          Q.    And approximately when did you quit?

22          A.    1963.

23          Q.    And why did you quit, sir?

24          A.    Just because I felt it was not conducive to good  
25 health.

1 Q. And in fact, sir, didn't you believe you were  
2 beginning to have health problems as a result of smoking  
3 cigarettes --  
4 A. No.  
5 Q. -- up until 1963?  
6 Again, sir, do you recall the deposition of Broin  
7 v. Philip Morris -- this is the videotaped deposition that  
8 you gave?  
9 A. Yes.  
10 Q. Do you recall that?  
11 A. Yes.  
12 Q. On page 29, sir, were you asked the following  
13 questions -- actually, I'll begin on Page 28:  
14 Question: "When did you smoke?  
15 "Until 1962.  
16 "When did you start smoking?  
17 "About when I was 22 years old.  
18 "Why did you stop?  
19 "I thought in my case I might have been subject  
20 to adverse effects."  
21 Question: "What kind of adverse effects?"  
22 Answer: "Just in general terms."  
23 Question: "Give me some examples of the adverse  
24 effects you're referring to."  
25 Answer: "Well, maybe excessive coughing."

1 "Give me another other example."  
2 Answer: "Shortness of breath."  
3 "Any other examples you can give me?"  
4 "No."  
5 Do you recall that testimony, sir?  
6 A. Yes.  
7 MR. SCHROEDER: Objection.  
8 MR. HENDRICKS: Objection. This is  
9 impeachment with consistent testimony.  
10 Q. Was that accurate testimony when you gave it,  
11 sir?  
12 A. Yes.  
13 Q. As we sit here today, sir, do you believe that  
14 cigarette smoking is addictive?  
15 A. No.  
16 Q. Do you believe that nicotine is addictive?  
17 A. No.  
18 Q. Sir, do you still believe today that it would be  
19 appropriate for some people to start smoking?  
20 MR. HENDRICKS: Objection to form.  
21 MR. SCHROEDER: Objection.  
22 A. I don't understand the question.  
23 Q. I'm asking you, as you sit here today, do you  
24 still believe it would be appropriate for some people to  
25 start smoking?

1 MR. HENDRICKS: Objection.

2 MR. SCHROEDER: Objection.

3 A. Yes, if they derive pleasure from it.

4 Q. When you were employed at Brown & Williamson and  
5 while serving on the ITC, did you discuss making cigarettes  
6 milder and more flavorful but did not discuss making them  
7 more healthful?

8 MR. HENDRICKS: Objection as to form.

9 MR. SCHROEDER: Objection.

10 A. No.

11 Q. Again, sir, referring to your deposition in the  
12 Broin case, the telephone deposition, page 36.

13 MR. SCHROEDER: Is this the 11 o'clock,  
14 Mr. Venable?

15 MR. VENABLE: This is the 11 o'clock.

16 MR. SCHROEDER: Thank you.

17 Q. Page 36, line 15: "Were you ever involved in any  
18 discussions or anything relating to the formulation or  
19 development of a, quote, fake cigarette, close quote?"

20 Answer: "No, not in those terms."

21 Question: "What do you mean not in those  
22 terms?"

23 Answer: "Well, I think we may have talked about  
24 making cigarettes milder and more flavorful but not in terms  
25 of being more healthful."

1 Do you recall that testimony, sir?

2 A. Yes, I do.

3 MR. HENDRICKS: Objection.

4 MR. SCHROEDER: Objection.

5 Q. Do you recall the testimony, sir?

6 A. Yes.

7 MR. SCHROEDER: Objection.

8 Q. And was it accurate testimony when you gave it?

9 A. Yes.

10 MR. HENDRICKS: Objection.

11 MR. SCHROEDER: Objection.

12 Q. Sir, when you were on the ITC, did you determine

13 that all nicotine could be removed from cigarettes?

14 MR. SCHROEDER: Objection.

15 MR. REILLY: Let me make an objection to

16 this line of questioning and the prior questions, because

17 this is way beyond the scope of redirect-examination or

18 re-cross-examination, however it's characterized, from the

19 very end of yesterday. We are so far afield from that now.

20 This is embarking on whole new areas of inquiry.

21 Q. You can answer the question, sir.

22 A. Did I -- would you repeat it, please?

23 Q. Yes. When you were serving on the ITC, did you

24 determine that all nicotine could be removed from

25 cigarettes?

1 A. No.

2 Q. Did any other members of the technical committee  
3 state that all nicotine from tobacco and low-nicotine  
4 cigarettes could be removed?

5 MR. HENDRICKS: Objection.

6 MR. REILLY: Objection to the form of the  
7 question. And again, same objection. This is beyond the  
8 scope.

9 A. No.

10 Q. Sir, during the six years that you were at Brown  
11 & Williamson, and after the TIRC and the ITC and the SAB  
12 were formed, did you gain a better understanding of smoking  
13 and -- of the smoking and health controversy?

14 MR. SCHROEDER: Objection.

15 MR. HENDRICKS: Objection; form and scope.

16 A. Yes.

17 Q. What was your better understanding that you  
18 obtained?

19 MR. SCHROEDER: Same objection.

20 MR. HENDRICKS: Same objection.

21 A. Better understanding of what, now?

22 Q. Better understanding of the smoking and health  
23 controversy..

24 MR. SCHROEDER: Same objection.

25 Q. You said that you gained a better understanding

1 of it while you were employed at Brown & Williamson, and I  
2 would like to know what better understanding you obtained.

3 MR. SCHROEDER: Same objection.

4 MR. HENDRICKS: Same objection; scope.

5 A. Well, we had lots of opinions from people like  
6 Wynder, and others who contradicted it.

7 Q. Wynder and others contradicted your opinions that  
8 you had?

9 A. No; other people who contradicted Wynder's views.

10 Q. Did you see any of the research that was  
11 performed through the SAB while you were at Brown &  
12 Williamson?

13 A. No.

14 MR. REILLY: Object to the form of the  
15 question.

16 Q. Sir, I think you told us yesterday that you  
17 didn't give the speech in Richmond, Virginia.

18 A. Right.

19 MR. HENDRICKS: Objection. This has nothing  
20 to do with my cross-examination of Dr. Tucker. It's  
21 entirely outside the scope, and now we're embarked on yet  
22 another line of questions that are apparently being  
23 propounded for no purpose other than to prolong these  
24 proceedings and harass Dr. Tucker.

25 Q. Are you sure of that statement, Doctor? Are you

1 sure you didn't give that speech?

2 MR. SCHROEDER: Objection.

3 A. Yes.

4 MR. SCHROEDER: Object to the argumentative  
5 form of the question.

6 MR. HENDRICKS: Objection; form.

7 Q. Again, sir, I'm referring to the Broin  
8 deposition, the videotaped deposition that you gave. You  
9 recall giving that testimony, sir?

10 A. Yes.

11 Q. Page 43. Question: "Have you reviewed" --

12 MR. SCHROEDER: What line?

13 MR. VENABLE: Line 1.

14 Q. "Have you reviewed anything in preparation for  
15 your deposition this morning or this afternoon?"

16 Answer: "Yes, I looked over --"

17 Question: "What did you review or what did you  
18 look over?"

19 Answer: "A speech I prepared for presentation in  
20 Richmond, Virginia."

21 Question: "Tell me about that speech."

22 Answer: "Well, I think it was merely an  
23 accounting of or what the tobacco industry had undertaken to  
24 do."

25 Question: "When did you give the speech and why

1 did you give the speech?"

2 Question: "Please answer the question."

3 Answer: "Well, it was just an important piece of  
4 information that the conference might be interested in."

5 Question: "And what was the conference?"

6 Answer: "I think it was tobacco industry."

7 Question: "What year was this conference?"

8 Answer: "1954."

9 "And you have a copy of the speech?"

10 Answer: "Yes."

11 Question: "Did you make the speech on behalf of  
12 Brown & Williamson?"

13 Answer: "I don't think I made it on behalf of  
14 anyone in particular except that this was an appropriate  
15 topic for the conference that was being held."

16 Question: "Was it to the general attendees at  
17 the conference or was it in a specific setting with respect  
18 to an issue?"

19 Answer: "Just that this was a conference of  
20 tobacco scientists who were entitled to know what was being  
21 done."

22 Question: "What was the gist of your speech?"

23 Answer: "The gist of the speech was that this is  
24 an open question about tobacco and health and that more  
25 careful study needed to be conducted."

1           Question: "Was this speech given in Richmond  
2 before or after the meeting at the Plaza?"

3           Answer: "That would be after."

4           A.    Yes.

5           Q.    Do you recall that testimony, sir?

6           MR. HENDRICKS: Objection; scope, improper  
7 impeachment, form.

8           MR. SCHROEDER: Same objection.

9           MR. HENDRICKS: In particular, counsel, in  
10 reading this colloquy, has disregarded numerous objections  
11 interposed by counsel at that proceeding, so the question,  
12 although it's extremely long, is misleading in that it  
13 misrepresents the questions and answers that took place at  
14 the deposition.

15           MR. VENABLE: Well, I correctly read the  
16 questions and the answers.

17           Q.    Do you recall that testimony, sir?

18           A.    Yes.

19           MR. SCHROEDER: Objection.

20           Q.    Was it accurate testimony when you gave it?

21           MR. HENDRICKS: Objection.

22           A.    Yes.

23           Q.    Well, sir, in this testimony you state that you  
24 made the speech, and just a few moments ago you said you  
25 didn't make the speech. Can you tell me which is accurate,

1 sir?

2 MR. HENDRICKS: Objection; that is not what  
3 that testimony states.

4 Q. Can you tell me which is accurate, sir?

5 MR. SCHROEDER: Objection.

6 A. I wrote the speech.

7 Q. I'm not talking about writing it, sir.

8 A. But I didn't present it.

9 Q. You never made the speech?

10 A. No.

11 Q. Did you ever discuss the subject of this speech  
12 with any lawyer who represents a tobacco company?

13 A. No.

14 (Deposition Exhibit 5 marked for  
15 identification.)

16 Q. Mr. Tucker, can you identify that as the press  
17 release that was prepared concerning the Richmond speech?

18 MR. VENABLE: I don't think that was  
19 attached yesterday.

20 MR. HENDRICKS: While Dr. Tucker is  
21 reviewing that document, let me just say that yesterday I  
22 was given or saw what appears to be a press release, which I  
23 think we briefly discussed. The copy of the document that I  
24 saw yesterday, which I'm holding in my hand, has the word  
25 "canceled" in handwriting in the upper right-hand corner

1 and it did not contain a cover memorandum of any sort. The  
2 document which the witness is looking at has a cover  
3 memorandum, which I don't think we saw yesterday. And the  
4 second page of that document is identical to the press --  
5 draft press release which we discussed yesterday except that  
6 it does not have the handwritten notation "canceled" on it,  
7 so that, in fact, what Dr. Tucker is looking at is  
8 substantially different than what we were looking at  
9 yesterday.

10 Q. Dr. Tucker, can you identify that press release?  
11 Have you ever seen that before?

12 A. No, I haven't.

13 Q. You never saw the press release that was prepared  
14 for your speech in Richmond, Virginia?

15 A. I may have, but I don't recall it.

16 Q. All right, sir.

17 MR. VENABLE: I've got about four documents  
18 to go into. I'm more than happy to give those to you-all  
19 and make copies of them, have them over lunch, and then I'm  
20 going to be finished. That would be the best way to  
21 proceed. That's fine. None of them are marked as being  
22 privileged.

23 MR. SCHROEDER: However we do it, I would  
24 prefer a copy before you go on.

25 MR. VENABLE: That's fine. I don't have a

1 problem with that. I'm trying to do it in the way that  
2 makes the most sense. Quite honestly, I didn't know that  
3 these -- this is my first deposition with you-all, and I  
4 didn't know you didn't have all this stuff already. I  
5 didn't figure that they were things unbeknownst to you.

6 MR. SCHROEDER: The problem is, we don't  
7 have them.

8 MR. VENABLE: I understand. I understand.  
9 I thought that these documents were a little bit more common  
10 knowledge than perhaps they are. Normally, we can usually  
11 move pretty quickly through this area.

12 MR. SCHROEDER: Why don't we make some  
13 copies.

14 MR. VENABLE: Okay. In any event, I'm going  
15 to provide you with the documents, make the copies at  
16 lunch. Some of them -- there are a few documents that I'm  
17 just going to have him identify and attach. There are other  
18 documents -- there are three or four documents that I'll go  
19 into. But I'll leave all the documents, and you can copy  
20 them or do what you want to over lunch. And then I've got a  
21 few minutes when we come back.

22 (11:38 LUNCH BREAK 12:33)

23 MR. REILLY: Before we get started, some of  
24 these documents bear that same Butler protective order. I  
25 don't know if you noticed that or not.

1 MR. VENABLE: Don't see it, but...

2 MR. REILLY: I'll make the same objection on  
3 those.

4 MR. VENABLE: Are any of those documents  
5 marked?

6 MR. REILLY: Yeah, this one.

7 MR. VENABLE: Which one?

8 MR. REILLY: We've got a big one called  
9 "Draft, Discussion of Tobacco Smoke Constituents."

10 MR. VENABLE: Yes.

11 MR. REILLY: It's got it on it. And I'm  
12 told that the Exhibit 3 also was only produced in Butler and  
13 subject to the same protective order in that case, so I  
14 don't know how you got them, but I need to make the  
15 objection.

16 Q. Mr. Tucker, did the TIRC authorize something that  
17 was known as the, quote, White Paper, close quote?

18 A. I'm not sure who authorized it.

19 Q. Was such a document known as a White Paper  
20 produced?

21 A. Yes.

22 Q. Did Hill & Knowlton write the White Paper?

23 A. I would assume they had.

24 MR. SCHROEDER: Objection.

25 MR. VENABLE: Mark this one, please.

1 (Deposition Exhibit 6 marked for  
2 identification.)

3 Q. Mr. Tucker, let me show you what's been marked as  
4 Plaintiff's Exhibit No. 6.

5 MR. HENDRICKS: Could you identify that for  
6 us?

7 MR. VENABLE: Yes. That's a letter from  
8 Mr. Tucker to Mr. Goss, G-o-s-s, January 25, 1954.

9 (Discussion held off the record.)

10 MR. SCHROEDER: For the record, Mr. Venable,  
11 is this document subject to a protective order?

12 MR. VENABLE: Not to my knowledge.

13 MR. SCHROEDER: My copy has a watermark that  
14 says, "Dissemination of this document," and then it bleeds  
15 out, I can't read the rest, which I understood to be some  
16 prohibition of its use.

17 MR. VENABLE: I know of none.

18 MR. REILLY: Well, we have a series of  
19 documents that appear to have been subject to a protective  
20 order in the Butler case, and I would object to the use of  
21 these documents in this deposition or for any other purpose,  
22 because it's apparently in violation of the order entered by  
23 the court in that case, unless someone is able to  
24 demonstrate today that they're not in violation of the order  
25 or represent that they were obtained through some fashion

1 other than in violation of the order.

2 I don't want to take up any more of this  
3 deposition time for the purpose of determining whether  
4 things were obtained in violation or not, but I certainly  
5 don't want to be in violation of the court's order myself  
6 and I don't think any other lawyer in this room would  
7 either.

8 So I object to the use of this document or any  
9 other document that is in this deposition that bears any  
10 mark that indicates it was obtained -- I'm sorry -- that it  
11 was subject to a protective order, court-entered protective  
12 order, that hasn't been vacated.

13 MR. HENDRICKS: Same objection.

14 MR. SCHROEDER: Same objection.

15 Q. Mr. Tucker, have you had an opportunity to review  
16 that document now?

17 A. This one?

18 Q. Yes, sir.

19 A. Yes.

20 Q. Does your name appear at the bottom on the second  
21 page?

22 A. Yes.

23 Q. And is this a document which you prepared?

24 A. Yes.

25 Q. And did you prepare it on or about January 25,

1 1954?

2 A. Yes.

3 Q. And did you prepare it in your capacity as

4 director of research at Brown & Williamson and in your

5 capacity as a member of the -- the -- what was your

6 committee again?

7 A. ITC.

8 Q. Yes, ITC. Did you prepare it as a member of the

9 ITC?

10 A. Yes.

11 MR. SCHROEDER: Objection.

12 Q. And it's addressed to a Mr. Goss, G-o-s-s,

13 executive vice president of Hill & Knowlton?

14 A. Yes.

15 Q. Did Mr. Goss work at Hill & Knowlton at the time?

16 A. I guess. I assume so.

17 Q. All right, sir. And this -- part of this

18 memorandum or letter concerns a draft of what is referred to

19 as a White Paper. Am I correct?

20 A. Yes, that's what it...

21 Q. And did you suggest to Mr. Goss in that letter

22 that the White Paper be entitled "Smoking and Health, The

23 Facts Are Not Alarming"?

24 MR. SCHROEDER: Objection to form.

25 MR. HENDRICKS: Objection to form.

1           A.    Yes.

2           Q.    All right, sir.

3                   (Deposition Exhibit 7 marked for

4   identification.)

5           Q.    I want to show you now, sir, what's been marked

6   as Plaintiff's Exhibit No. 7, which is entitled "Company

7   Research Directors' Advisory Committee, January the 7th,

8   1954."

9                   MR. SCHROEDER:  For the record, can you tell

10   us how many pages are in this exhibit?

11                  MR. VENABLE:  Two pages.

12           Q.    Have you had an opportunity to review that

13   document, Mr. Tucker?

14           A.    Yes.

15           Q.    Does that document bear your name at the bottom

16   on the second page?

17           A.    Yes, it does.

18           Q.    And was this document prepared in your capacity

19   as chairman of the ITC?

20           A.    Yes.

21           Q.    And was it prepared on or about January the 7th,

22   1954?

23           A.    Yes.

24           Q.    And in that document, did you state, concerning

25   the White Paper, as follows, at paragraph 3 of the first

1 page: "The Hill and Knowlton, Inc. draft of a background  
2 memo, or 'white paper,' on the tobacco-cancer question was  
3 discussed. The consensus was that it could be strengthened  
4 by addition of some new material, perhaps deletion of some,  
5 and that it might include a critical statement or two for  
6 balance. Members were asked to submit suggestions to Bert  
7 Goss in advance of the January 18 meeting of the Tobacco  
8 Industry Research Committee"?

9 MR. SCHROEDER: Objection; document speaks  
10 for itself.

11 MR. HENDRICKS: Object to form.

12 Q. Did you state that in that document, sir?

13 A. That's what it says.

14 (Deposition Exhibit 8 marked for  
15 identification.)

16 Q. Sir, let me show you what's been marked as  
17 Plaintiff's Exhibit No. 8. It's a January 11, '57, ITC  
18 meeting.

19 MR. REILLY: Confidential report?

20 MR. VENABLE: Right, TIRC.

21 MR. REILLY: Okay.

22 MR. SCHROEDER: For the record, I think it  
23 was clear, but I make a continuing objection to the use of  
24 any of these to the extent they're covered by a protective  
25 order. That would be for this exhibit or for any other

1 exhibit offered by Mr. Venable or Mr. Wilner.

2 Q. My first question to you, sir, is this document  
3 dated January the 11th, 1957? Top of the page.

4 MR. HENDRICKS: Object to the form.

5 Q. Do you understand my question, sir?

6 A. No.

7 Q. Let me repeat it. Is the document dated January  
8 the 11th, 1957?

9 A. Yes, it is.

10 Q. All right, sir. And is it entitled "Confidential  
11 Report, Industrial Technical Committee Meeting"?

12 A. Yes.

13 MR. HENDRICKS: Object to the form.

14 MR. SCHROEDER: Object to the form.

15 Q. And, Doctor, was it the ordinary custom of the  
16 ITC to have reports made concerning events which took place  
17 at its meetings back in the mid-'50s?

18 A. Yes.

19 Q. And were those reports substantially in the form  
20 as the one that you're looking at?

21 A. Yes.

22 MR. SCHROEDER: Objection to form.

23 Q. And is your name listed under attendance?

24 A. Yes.

25 MR. HENDRICKS: Object to the form.

1 Q. If you could, sir, on page -- it's actually page  
2 3 of the document, but you'll notice that page 2 is reserved  
3 as blank, so it's actually page 2 of the text.

4 As part of paragraph No. 4, about halfway down  
5 the page, which is stated as follows -- did you find where  
6 I'm talking about, sir?

7 It says, "It was pointed out that the  
8 non-nicotine content should be considered as it might well  
9 pose a problem to the researchers. Members of the Technical  
10 Committee also pointed out that it is possible to remove  
11 nicotine from the tobacco and that low-nicotine cigarettes  
12 could be made available by this method but that, in doing  
13 so, other important ingredients might also be removed which,  
14 in turn, might make the resulting product undesirable."

15 Do you see where it says that, sir?

16 A. No, I haven't located that.

17 MR. HENDRICKS: Object to the form.

18 Q. Okay, sir. Let me see if I can show you on my  
19 document so we can get in the same place. This paragraph  
20 right here, sir.

21 A. I think I see it now.

22 Q. Okay. Could you read that and make sure that I  
23 read it accurately?

24 A. "It was pointed out that the low -- nor-nicotine  
25 content should be considered as it might well pose a problem

1 to the researchers. Members of the Technical Committee also  
2 pointed out that it is possible to remove nicotine from the  
3 tobacco and that low-nicotine cigarettes could be made  
4 available by this method but that, in doing so, other  
5 important ingredients might also be removed which, in turn,  
6 might make the resulting product undesirable."

7 Q. Let me ask you a couple of other questions. What  
8 would -- what about removing the nicotine -- what about the  
9 product would become undesirable?

10 MR. HENDRICKS: Object to the form.

11 MR. SCHROEDER: Object to the form.

12 A. It might not taste as good, as well.

13 Q. And if it didn't -- if the product didn't taste  
14 as well, what was the concern of your department when you  
15 were at Brown & Williamson and while you were serving on the  
16 ITC?

17 MR. HENDRICKS: Object to the form.

18 MR. SCHROEDER: Object to form.

19 A. (Pause)

20 Q. Do you understand my question, sir?

21 A. Yes.

22 Q. Okay. What -- could you answer it, please?

23 A. (Pause)

24 Q. Would you like for me to restate the question or  
25 rephrase it?

1 A. Please.

2 Q. Let me do that. You've told me that one of  
3 the -- that the product may become undesirable by removing  
4 nicotine because it might not taste as good. And my  
5 question to you was, what effect would the fact that the  
6 product didn't taste as good have had on your job as a  
7 chemist at Brown & Williamson and while you were serving on  
8 the ITC?

9 MR. SCHROEDER: Object to form.

10 A. Well, in removing nicotine you would change the  
11 nature of the tobacco, the remaining part of the tobacco.

12 Q. And if you did that, would it be -- is it --  
13 would the product be less desirable?

14 A. I would assume so, yes.

15 MR. REILLY: Object; calls for speculation.

16 MR. SCHROEDER: Same objection.

17 Q. Why, as a chemist and as a member of the ITC,  
18 were you concerned about the desirability of the product?

19 MR. HENDRICKS: Objection; assumes that this  
20 document was written by Dr. Tucker.

21 Q. Let me rephrase the question. Why were members  
22 of the ITC concerned with whether or not cigarettes were  
23 desirable?

24 MR. HENDRICKS: Object to the form.

25 MR. SCHROEDER: Same objection.

1           A.    It was broadly assumed that the consuming public  
2 had a certain expectation of the taste in tobacco smoke.

3           Q.    So it was your understanding and the ITC's  
4 understanding that if the cigarettes did not taste as good,  
5 the public might not buy them?

6                   MR. SCHROEDER:  Objection.

7           A.    Yes.

8                   (Deposition Exhibit 9 marked for  
9 identification.)

10                   MR. VENABLE:  This is entitled "A Discussion  
11 of Tobacco Smoke Constituents."

12           Q.    Sir, I'm going to show you what's been marked as  
13 Plaintiff's Exhibit No. 9 and ask you if, on the first page  
14 of that, your name appears?

15                   MR. HENDRICKS:  Objection to form.

16           A.    Yes, my name appears.

17           Q.    Did you prepare that document, sir?

18                   MR. HENDRICKS:  Object to the form.  Let me  
19 also object on the grounds again of scope.  We're far  
20 outside -- hours removed and far outside the five minutes of  
21 cross-examination yesterday.  This has nothing whatsoever to  
22 do with the scope of that examination.

23           Q.    Do I need to repeat the question for you, sir?

24           A.    Yes.

25           Q.    My only question at this point is, did you

1 prepare this document?

2 MR. HENDRICKS: I'm going to object to that  
3 unless he can answer this without reading the entire  
4 document.

5 MR. VENABLE: I don't know what it's going  
6 to take for him to answer the question. I'm just posing it.

7 Q. Are you able to answer my question, sir?

8 A. Yes.

9 Q. You are -- you did author the document? I don't  
10 know if you're saying, "Yes, I can answer your question,"  
11 or, "Yes, I'm the author." That's my only question at this  
12 point. Did you author this document?

13 A. I assume it was if it carried this cover.

14 Q. Yes, sir.

15 MR. SCHROEDER: Move as non-responsive.

16 Q. It has a date on it that's handwritten of June 3,  
17 1955, top right side.

18 A. Yes.

19 Q. Do you believe you prepared this document on or  
20 about June 3, 1955?

21 A. Yes.

22 Q. Was it prepared while you were -- in your  
23 capacity as a chemist at the Brown & Williamson Company and  
24 while you were serving on the ITC?

25 A. Yes.

1 (Deposition Exhibit 10 marked for  
2 identification.)

3 Q. March 15, '54, report of a meeting of the TIRC.

4 Mr. Tucker, I've showed you what's been marked as  
5 Plaintiff's Exhibit No. 10. Sir --

6 A. This have a number? Oh, yes. Here. Ten.

7 Q. Yes, sir. Is that document entitled  
8 "Confidential Report of Meeting March 15, 1954, Tobacco  
9 Industry Research Committee"?

10 A. That's what it says.

11 Q. And are you listed as in attendance, about  
12 halfway down the list of names there?

13 A. Yes.

14 MR. HENDRICKS: Objection to the form.

15 Q. And are you listed in attendance as a member of  
16 the ITC?

17 A. Yes.

18 Q. Were reports routinely prepared after meetings  
19 were held of the TIRC?

20 MR. SCHROEDER: Objection.

21 A. Yes.

22 Q. And were those reports substantially in the same  
23 form as the report that you have in your hand?

24 MR. SCHROEDER: Objection.

25 MR. HENDRICKS: Objection.

1 A. I would expect so.

2 Q. Thank you, sir.

3 (Deposition Exhibit 11 marked for  
4 identification.)

5 Q. Sir, let me show you what's been marked as  
6 Plaintiff's Exhibit No. 11.

7 MR. HENDRICKS: Would you identify that?

8 MR. VENABLE: It's a progress report,  
9 January 15, '54.

10 Q. Sir, let me ask you, were progress reports  
11 prepared of the TIRC meetings?

12 A. Yes.

13 Q. And were the progress reports that were prepared  
14 in substantially the same form as that which you're  
15 observing now?

16 MR. SCHROEDER: Objection.

17 A. Yes.

18 Q. And this one is dated January the 15th, 1954?

19 A. Yes.

20 Q. Thank you, sir.

21 (Deposition Exhibit 12 marked for  
22 identification.)

23 Q. Mr. Tucker, let me show you what's been marked as  
24 Plaintiff's Exhibit No. 12. Program projects, 1/15/54.

25 Is that document entitled "Program Projects"?

1 A. Yes.

2 Q. And is it also dated January the 15th, 1954?

3 A. Yes, it is.

4 MR. HENDRICKS: Object to form.

5 Q. And were -- and did the TIRC routinely prepare  
6 documents such as this, entitled "Program Projects"?

7 MR. REILLY: Objection.

8 MR. HENDRICKS: Objection.

9 Q. You may answer, sir.

10 A. I assume so.

11 Q. And can you identify whose handwriting is -- do  
12 you see handwriting on the first page, sir?

13 A. Yes.

14 Q. Do you know whose handwriting that is?

15 A. No.

16 Q. All right, sir.

17 Mr. Tucker, this isn't the first time that you've  
18 testified at the request of Brown & Williamson Tobacco  
19 Company, is it?

20 A. This time, you mean today or --

21 Q. Yes. Well, beginning yesterday. I mean, you've  
22 testified for Brown & Williamson in the past, have you not?

23 A. No.

24 Q. Weren't you contacted by Brown & Williamson and  
25 asked to testify in the Broin case that we talked about

1 earlier?

2 A. You mean the one this year earlier?

3 Q. Yes, sir. Back in, I guess it was what, February

4 or so? Do you recall?

5 A. I think it was March, wasn't it?

6 Q. March, whatever. I'm not sure of the date.

7 Were you contacted by Brown & Williamson and

8 asked to testify in that case?

9 A. Yes.

10 Q. All right, sir. So this is not the first time

11 that you've testified on behalf of Brown & Williamson,

12 correct?

13 A. No.

14 Q. And you met with lawyers for Brown & Williamson

15 before you testified in the Broin case, right?

16 A. Yes.

17 MR. HENDRICKS: Objection; outside the

18 scope.

19 Q. And you met with lawyers from Brown & Williamson

20 before you testified beginning yesterday, correct?

21 A. Yes.

22 MR. HENDRICKS: Same objection.

23 Q. Were you paid any money for the time that you

24 spent testifying in the Broin case?

25 A. No.

1 MR. HENDRICKS: Same objection.

2 Q. Had you expected to be paid for your testimony in  
3 the Broin case?

4 MR. HENDRICKS: Same objection.

5 A. No.

6 Q. And this is not your first time appearing as a  
7 witness in a case other than Broin; am I correct?

8 A. Yes.

9 Q. You've appeared in approximately 30 trials; am I  
10 correct?

11 A. That would be approximately so.

12 Q. All right, sir. And those were in tire cases,  
13 correct?

14 A. Tires and fires.

15 Q. All right, sir. And were you paid to testify in  
16 those cases?

17 A. Yes.

18 MR. VENABLE: I don't think I have anything  
19 else at this point, Mr. Tucker. Thank you very much.

20 THE DEPONENT: Are these mine to keep?

21 MR. VENABLE: No, sir.

22 MR. WILNER: Did you have something you  
23 wanted to say? You look like you're ready to say  
24 something. As a matter of scheduling, I didn't want to cut  
25 you off.

1 MR. HENDRICKS: No, go right ahead. If I  
2 want to say something, I'll speak right up.

3 EXAMINATION

4 BY MR. WILNER:

5 Q. Dr. Tucker, look at that document which we've  
6 talked about earlier. It's called Report on Chicago  
7 Interviews. Do you see it?

8 A. Yes.

9 Q. And underneath there, underneath the title, it's  
10 got Dr. Irwin Tucker, H. R. Hammer, and Grant Clarke. Do  
11 you see that?

12 A. Yes, I see that.

13 Q. Now, you three, Tucker, Hammer and Clarke, were a  
14 subcommittee that was charged with the responsibility of  
15 interviewing potential candidates for the job as scientific  
16 director of the TIRC, true?

17 A. Yes.

18 MR. HENDRICKS: I want to object again to  
19 the use of this document. This document, which on its face,  
20 appears to be used in violation of a court order in Butler.

21 MR. WILNER: Not to debate with counsel but  
22 just to state our position, the tendering of this witness --  
23 A, the tendering of this witness constitutes a waiver of all  
24 proprietary or other objections that might be made to  
25 documents that he himself authored; B, the viability of any

1 protective order in the state of Florida is null; C, if this  
2 document was subject to protective order by virtue of its  
3 representation that it involves trade secrets or anything  
4 else that remotely resembles a privilege, it was obtained  
5 fraudulently.

6 Q. Dr. Tucker, was I right that you and Mr. Hanmer  
7 of American Tobacco and Mr. Clarke of R.J. Reynolds were  
8 members of a subcommittee?

9 A. Yes.

10 Q. And that subcommittee was in existence how long?

11 A. Starting in December of '53.

12 Q. And ending when you picked Clarence Cook Little?

13 A. Yes.

14 Q. And when did Clarence Cook Little get picked?  
15 Was it the spring of '54?

16 A. Approximately.

17 Q. And during the time that you were -- that this  
18 committee was in operation, it interviewed several  
19 candidates for the job as scientific director, true?

20 A. Yes, it did.

21 Q. And you interviewed them as a committee jointly;  
22 is that true?

23 A. Yes.

24 Q. And as evidenced from this Report on Chicago  
25 Interviews, you produced at least one report jointly as a

1 committee, signed by all three members of the committee,  
2 true?

3 A. Yes.

4 Q. Do you know, sir, the date that this document was  
5 authored by this committee?

6 A. I see no date on it.

7 Q. I understand that. That's why I asked you.  
8 As the author, do you know the date or can you  
9 estimate the date of this document?

10 MR. REILLY: Object to the form of the  
11 question.

12 A. I would guess about late February or early March.

13 Q. Okay. So does this recount the efforts that the  
14 committee made in interviewing certain persons which are  
15 referred to here in this document?

16 MR. HENDRICKS: Objection.

17 A. What's the question?

18 Q. Does this document recount the attempts of the  
19 committee to interview certain persons, to wit, the persons  
20 who were named on this document?

21 A. Yes.

22 Q. Were all of these people interviewed by the  
23 committee?

24 A. Yes.

25 Q. Earlier, you had failed to recollect the

1 interview of Clayton Loosli. Does this refresh your  
2 recollection, on page 3, that Dr. Loosli was interviewed?

3 A. Yes.

4 Q. After the interviews were conducted, would it be  
5 typical for the committee members -- yourself, Dr. Tucker;  
6 Dr. Hanmer or Mr. Hanmer; and Mr. Clarke -- to discuss the  
7 candidate and the suitability of the candidate?

8 A. Okay.

9 Q. Okay. Did you understand my question? I'm  
10 sorry.

11 MR. REILLY: I think the witness was  
12 reading.

13 MR. WILNER: I understand.

14 Q. Do you understand my question?

15 A. You better repeat it.

16 Q. All right; that's fine.

17 Did the committee discuss amongst itself, with  
18 the three of you -- Tucker, Hanmer and Clarke -- the  
19 suitability of the candidates as you interviewed them?

20 A. Yes, we did.

21 Q. Are there any other reports of interviews other  
22 than the one that you're holding in your hand that exist?

23 A. I don't recall any.

24 Q. All right. And so I'm clear, you do not recall  
25 authoring any others; is that true?

1 MR. HENDRICKS: Object. There's no evidence  
2 that he authored this one.

3 MR. SCHROEDER: Objection.

4 MR. WILNER: Is that a statement by  
5 counsel? Is counsel testifying now?

6 MR. PARRISH: Let's move on.

7 MR. WILNER: I'm being directed to move on  
8 too?

9 MR. PARRISH: That's correct. Move on.

10 MR. WILNER: Leaving the room? You want me  
11 to leave?

12 MR. PARRISH: Move on with your  
13 questioning. You're abusing the process and I'm getting  
14 tired of it.

15 MR. WILNER: You're tired of it?

16 MR. PARRISH: Correct. Move on.

17 MR. WILNER: What should I do if you get  
18 tired of it?

19 MR. PARRISH: Ask a question; act like a  
20 proper, professional lawyer.

21 MR. WILNER: He's tired of it. We're all  
22 tired of it. Can we get an answer?

23 MR. REILLY: Could you repeat the question?

24 MR. HENDRICKS: Object to the form.

25 MR. PARRISH: I object to the form.

1 Q. Did you author this document --  
2 A. At a point, yes.  
3 Q. -- that bears your name?  
4 A. Yes.  
5 Q. Okay. So my question --  
6 MR. HENDRICKS: Just for the record,  
7 counsel, it bears the name I. R. Tucker. My belief is that  
8 that's not Dr. Tucker's name.  
9 MR. WILNER: Well, your belief appears to  
10 conflict with Dr. Tucker's testimony.  
11 Q. Dr. Tucker, are you Dr. Irwin Tucker?  
12 A. Yes.  
13 Q. Is there another Dr. Irwin Tucker that served on  
14 this committee with Dr. Hanmer and Dr. Clarke?  
15 A. Not that I know of.  
16 Q. Did you author any other reports on any  
17 interviews with prospective candidates?  
18 A. I would assume I did.  
19 Q. And with which candidates or as a result of  
20 interviews with which candidates did you issue reports?  
21 MR. REILLY: Object to the form.  
22 A. I think Stewart, Dr. Stewart and the National  
23 Cancer Institute.  
24 Q. Who else?  
25 A. And one or two candidates in the vicinity of

1 Houston, Texas.

2 Q. Okay. And would those reports have been issued  
3 by you prior to this document --

4 A. No, sir --

5 Q. -- or after?

6 A. -- subsequent to this one.

7 Q. Okay. And did you turn those reports over to  
8 Brown & Williamson and the TIRC?

9 A. Yes.

10 Q. Do you have possession of those reports now?

11 A. No.

12 Q. Have you seen them since you issued them?

13 A. No.

14 Q. Let me direct your attention to page 3, under the  
15 heading Dr. Clayton G. Loosli. At the bottom of the page,  
16 let me direct your attention to the paragraph beginning, "He  
17 mentioned the statement of Dr. Winternitz shortly after the  
18 influenza epidemic of 1918, that there would be a tremendous  
19 increase in lung cancer in about 20 to 25 years. We had  
20 originally thought that Dr. Loosli might have been a good  
21 candidate for our scientific director, but it is our opinion  
22 that the fact that he does not smoke might cause too much  
23 comment."

24 Do you remember that?

25 A. Yes.

1 Q. Did you write that?

2 A. Either myself or in conjunction with the other

3 participants.

4 Q. Does that refresh your recollection as to whether

5 smoking was a requirement for people to serve as scientific

6 director?

7 A. No.

8 MR. SCHROEDER: Objection.

9 Q. Doesn't refresh it?

10 A. (Pause)

11 Q. Let me ask you another way. Was smoking a

12 requirement for doctors to serve as the scientific director?

13 A. No.

14 Q. Why did you believe at the time that you wrote

15 this that it was your opinion that the fact that Dr. Loosli

16 did not smoke might cause too much comment?

17 A. Well, just a statement of fact or opinion.

18 Q. Too much comment from who?

19 A. The public.

20 Q. What kind of comment?

21 A. Well, I can only guess.

22 MR. SCHROEDER: Objection.

23 Q. Well, tell me what you meant when you said "too

24 much comment" in the document that you authored.

25 MR. SCHROEDER: Objection again.

1           A.   Well, someone might try to make something of it.  
2           Q.   Like what?  
3           A.   Because he didn't smoke himself and therefore he  
4 was prejudiced.  
5           Q.   Prejudiced which way?  
6           A.   Against tobacco.  
7           Q.   So you were worried that someone might feel that  
8 he was prejudiced against tobacco?  
9                   MR. SCHROEDER:  Objection.  
10          A.   Yes.  
11          Q.   Okay.  Now let me hand you what's been marked as  
12 a memo, with the initials HRH.  Do you remember that?  
13          A.   Yes.  
14                   MR. REILLY:  This has been marked as  
15 Exhibit 3?  
16                   MR. WILNER:  Right.  
17          Q.   Now, HRH are the initials of H. R. Hanmer,  
18 correct?  
19          A.   Yes.  
20          Q.   Now, was Dr. Hanmer -- Dr. Hanmer or Mr. Hanmer  
21 was a member of the American Tobacco Company, right?  
22          A.   Yes.  
23          Q.   And he served on the ITC as well, didn't he?  
24          A.   Yes.  
25          Q.   And he was on the subcommittee with you and

1 became a full member of this subcommittee; is that true?

2 A. Yes.

3 Q. And did you share with Mr. Hanmer the thoughts  
4 and goals that you had when he joined the committee?

5 MR. SCHROEDER: Objection.

6 A. Yes.

7 Q. Mr. Hanmer, did he serve as an integral part of  
8 the committee until the election of or selection of Mr. --  
9 or Dr. Clarence Cook Little?

10 A. Yes.

11 MR. SCHROEDER: Objection.

12 Q. How much was Dr. Little paid to be scientific  
13 director?

14 A. I don't recall, if I ever knew.

15 Q. Was it your job to present the money to him?

16 A. No.

17 Q. It was a paying thing, though, wasn't it?

18 A. I believe it was.

19 Q. And it was something that would require almost a  
20 full-time commitment, right?

21 A. Yes.

22 Q. Did you interview -- or did you do background  
23 research on Dr. Little?

24 A. Yes, we did.

25 Q. Did you know what kind of activities he did

1 before the war, before World War II?

2 A. I don't recall.

3 Q. You know that he was in charge of the laboratory

4 up in Bar Harbor, Maine, right?

5 A. Yes.

6 Q. And he did a lot of mouse breeding, right?

7 A. Yes.

8 Q. Did you know that he was involved with the

9 eugenics movement?

10 A. No.

11 Q. You know what that is?

12 A. No.

13 Q. Never heard of eugenics?

14 A. I heard the term, yes.

15 Q. You don't know what it signifies?

16 MR. REILLY: Object to the form of the

17 question.

18 Q. Or do you, sir? Do you know what eugenics

19 involves?

20 MR. HENDRICKS: Object to this line of

21 questions relating to eugenics. It's never come up before,

22 wasn't used yesterday, had nothing to do with the scope of

23 my questions, and it's obviously an attempt to prolong and

24 harass Dr. Tucker.

25 Q. When you investigated Dr. Clarence Cook Little's

1 background, did you determine that he had been active in the  
2 eugenics movement?

3 MR. HENDRICKS: Same objection.

4 A. No.

5 Q. You did not discover that --

6 A. No.

7 Q. -- in your inspection?

8 MR. REILLY: Object; it's repetitious.

9 Q. Had you discovered, would that have made a  
10 difference to you in whether Dr. Little would be a suitable  
11 candidate?

12 MR. SCHROEDER: Objection.

13 MR. REILLY: Speculation.

14 MR. HENDRICKS: Objection.

15 A. Not necessarily.

16 Q. Not necessarily means what to you, sir? That it  
17 might be or might not be?

18 MR. REILLY: Object; calls for speculation.

19 A. I'd have to know more details about it.

20 Q. Okay. So then you would have -- had you known  
21 that, would you have inquired of Dr. Little exactly what  
22 role he played in the eugenics movement?

23 MR. HENDRICKS: Objection.

24 MR. REILLY: Objection.

25 MR. SCHROEDER: Objection.

1           A.    Yes, I would have.

2           Q.    And did you have some background familiarity with  
3 the principles of the eugenics movement?

4                   MR. HENDRICKS:  Asked and answered at least  
5 three times.

6           Q.    Sir, did you know anything about it?  I guess I'm  
7 not clear on what your answer is.

8           A.    No.

9           Q.    No, you did not know anything about it?

10          A.    No.

11          Q.    Did you ever receive a copy of the journal  
12 "Eugenics"?

13          A.    No.

14                   MR. HENDRICKS:  Objection; scope.

15          Q.    Did you make monetary offers to anybody but  
16 Clarence Cook Little?

17                   MR. HENDRICKS:  Objection; misstates the  
18 record.

19          A.    No.

20          Q.    Did anyone but Clarence Cook Little agree to  
21 become scientific director?

22          A.    Not to my knowledge.

23          Q.    How many people were interviewed in the entire  
24 interview process?

25          A.    I would say six or eight.

1 Q. Let me go back to the time that you were a --  
2 that you attended this 1953 meeting where the TIRC was  
3 initiated.

4 MR. HENDRICKS: I'm going to object to this  
5 line of questioning. This is about the fourth time the 1953  
6 meeting has been gone back through by counsel. This  
7 constant, repetitive plowing back and forth by both lawyers  
8 is intended, I would contend, to harass Dr. Tucker.

9 Q. I haven't asked you yet, but I'm going to direct  
10 your attention to the 1953 meeting. Do you remember?

11 A. Yes.

12 Q. And you were asked at that time, I think, what  
13 your knowledge was of the hazards of cigarettes at the time  
14 that you attended that meeting, right?

15 MR. SCHROEDER: Objection.

16 MR. HENDRICKS: Objection.

17 A. I don't recall that.

18 Q. Okay. Well, then I'll ask you directly. What  
19 was your knowledge on the hazards of Brown & Williamson  
20 cigarettes at the time you attended the meeting in 1953?

21 MR. HENDRICKS: Objection.

22 MR. REILLY: Objection to form and scope of  
23 the question.

24 A. I didn't consider them hazardous.

25 Q. Okay. Did you -- were you aware of whether or

1 not carcinogens had been identified in the smoke of  
2 cigarettes as of this 1953 meeting?

3 MR. HENDRICKS: Objection; scope, form.

4 A. No, they had not been.

5 Q. And it's your testimony that at the time this  
6 meeting occurred, members of R.J. Reynolds were in  
7 attendance at this meeting?

8 MR. SCHROEDER: Objection.

9 MR. HENDRICKS: Objection to form.

10 Q. Is that true?

11 MR. SCHROEDER: Objection.

12 A. Yes.

13 Q. And did the people from R.J. Reynolds express the  
14 belief that carcinogens had not been identified in cigarette  
15 smoke in 1953?

16 MR. SCHROEDER: Objection.

17 A. I can't answer that.

18 Q. Did you inquire as of -- did you inquire from the  
19 personnel at R.J. Reynolds whether or not their own  
20 laboratory had identified carcinogens in cigarette smoke?

21 MR. SCHROEDER: Objection.

22 A. No.

23 Q. When was the first time that Brown & Williamson  
24 laboratory identified carcinogens in cigarette smoke?

25 MR. HENDRICKS: Objection; form.

1           A.    Never did in my knowledge.

2                   MR. REILLY:  Objection.

3           Q.    Let me hand you a document entitled "Survey of  
4   Cancer Research with Emphasis on Possible Carcinogens from  
5   Tobacco," authored by Claude E. Teague, Jr., 1953, the 2nd  
6   of February.

7           A.    Claude who?

8           Q.    Claude Teague of the R.J. Reynolds Tobacco  
9   Company.

10                   MR. SCHROEDER:  Before you do that, unless  
11   you have copies for everybody, I'd like to have a copy of  
12   that document.

13                   MR. WILNER:  No, I don't have copies for  
14   everybody.

15                   MR. SCHROEDER:  I'd like to adjourn so we  
16   can all have copies of the document.

17                   MR. HENDRICKS:  Just note for the record  
18   that once again we're talking about the use of a document  
19   without any copies for counsel.  This is going to prolong  
20   this proceeding and further tire-out Dr. Tucker.

21                               (1:28 BREAK 1:51)

22                   MR. WILNER:  First let's mark it.  Next  
23   number, please.

24                               (Deposition Exhibit 13 marked for  
25   identification.)

1 Q. All right. Dr. Tucker, let me direct your  
2 attention to this document with the title page that says  
3 "Survey of Cancer Research with Emphasis Upon Possible  
4 Carcinogens from Tobacco." Do you see that on the title?

5 A. Yes.

6 Q. And have you, prior to today, seen this document?

7 A. No.

8 Q. Is it true, sir, that while you were a member of  
9 the advisory committee to TIRC that this document, to your  
10 knowledge, was never presented either to the committee or to  
11 TIRC?

12 A. Correct.

13 Q. Now, was the existence of carcinogens in tobacco  
14 smoke of interest to the scientific people on the TIRC?

15 A. Yes.

16 MR. SCHROEDER: Objection.

17 Q. Was it of interest to you in 1953 whether in fact  
18 there were carcinogens in tobacco smoke?

19 A. Yes.

20 Q. What research did you undertake to determine  
21 whether or not there were carcinogens in tobacco smoke as of  
22 1953?

23 Sir, do you want to read the document first?  
24 Actually, my question did not directly concern the document,  
25 but you can read the document at your leisure if you'd

1 like.

2 A. Your question?

3 Q. But first let me get some things straight and  
4 then we'll go back to the document.

5 My question was, what research did you conduct to  
6 ascertain whether there were carcinogens in tobacco smoke as  
7 of 1953?

8 A. I'd done none.

9 Q. Okay. Let me direct your attention to page 12 of  
10 this document. And before we read that, is it correct, sir,  
11 that you and your knowledge as of 1953 was the -- strike  
12 that.

13 Is it true that in 1953 you represented the  
14 knowledge available or obtained by the Brown & Williamson  
15 Tobacco Company?

16 A. Yes.

17 MR. HENDRICKS: Objection to form.

18 Q. Okay. So let's look at page 12. And again I  
19 remind you this is a document from the files of the R.J.  
20 Reynolds Tobacco Company, sir.

21 MR. SCHROEDER: Objection.

22 Q. Do you see on page 12 the subtitle bearing  
23 underlined text "C. Carcinogens Identified in Tobacco  
24 Substances"? Do you see that, sir?

25 A. Yes, I see that.

1 Q. And the next paragraph, the second sentence has  
2 the following statement, which I will read and then ask you  
3 about. "On the basis of the information at hand it would  
4 appear that polynuclear aromatic compounds occur in the  
5 pyrolytic products of tobacco. Benspyrene and  
6 'N-benspyrene,' both carcinogens, were identified in the  
7 distillates." Do you see that?

8 MR. HENDRICKS: Excuse me, counsel. Did you  
9 say on the very next paragraph? I'm having trouble finding  
10 this.

11 MR. WILNER: It's the paragraph at -- the  
12 last paragraph on page 12, second sentence. "On the basis  
13 of the information at hand..."

14 Q. Have you located that text, sir?

15 A. Okay. This paragraph.

16 Q. Yeah. The bottom paragraph says, "On the basis  
17 of the information at hand it would appear that polynuclear  
18 aromatic compounds occur in the pyrolytic products of  
19 tobacco."

20 A. Yes, I see that.

21 Q. Do you understand that sentence as a chemist?

22 MR. SCHROEDER: Objection to form.

23 Q. Dr. Tucker, do you want me to repeat the  
24 question? I don't know whether you've gotten it.

25 MR. REILLY: He's clearly reading this

1 document that he's never seen before.

2 A. Yes, go ahead.

3 MR. WILNER: I'll give him all the time he  
4 wants so long as we agree on what we're doing.

5 MR. REILLY: I think he's just reading the  
6 document.

7 MR. WILNER: Well, okay.

8 Q. Dr. Tucker, do you want to read the whole  
9 document? I can't stop you from doing it, but I want to try  
10 to move the questioning along.

11 MR. HENDRICKS: I'd like to interpose an  
12 objection to the examination as if by cross-examination of  
13 Dr. Tucker based upon a 19-page technical document he's  
14 never seen before.

15 Q. Dr. Tucker, let me ask you, sir, do you know what  
16 a polynuclear aromatic compound is?

17 A. Yes.

18 Q. And did you as a chemist, working for Brown &  
19 Williamson, do research on polynuclear aromatic compounds?

20 A. I did it prior to being at Brown & Williamson.

21 Q. All right. Did you do any while you were at  
22 Brown & Williamson?

23 A. No.

24 Q. All right. Do you know some examples of  
25 polynuclear aromatic compounds?

1 MR. HENDRICKS: Objection; scope.  
2 A. Yes; diphenyl and triphenyl.  
3 Q. Diphenyl and triphenyl?  
4 A. Yes.  
5 Q. Do you know what benzopyrene is?  
6 A. Yes.  
7 Q. Also known as B.A.P.?  
8 A. Yes.  
9 Q. Did you, while you were at Liggett, do research  
10 into the benzopyrene content of cigarette smoke?  
11 A. No.  
12 MR. HENDRICKS: Objection; scope.  
13 Q. Did you do it while you were at Brown &  
14 Williamson?  
15 A. No.  
16 MR. HENDRICKS: Same objection.  
17 Q. Did you do it while you were in the technical  
18 committee advising the TIRC?  
19 A. No.  
20 MR. HENDRICKS: Same objection.  
21 Q. Did you have access, while you were in the  
22 technical committee advising the TIRC, of any information  
23 that proved or suggested that benzopyrene was a carcinogen  
24 found in cigarette smoke?  
25 A. No, I didn't.

1 MR. HENDRICKS: Same objection.

2 MR. SCHROEDER: Objection.

3 Q. Okay. What are the pyrolytic products of  
4 tobacco? Do you know what that word means, pyrolytic?

5 MR. HENDRICKS: Objection; scope.

6 Q. Yes? Do you know what it means?

7 A. Yes.

8 Q. Means formed in the burning of tobacco, correct?

9 A. Yes.

10 Q. Did you, while you were at Brown & Williamson,  
11 inspect the pyrolytic compounds of tobacco --

12 A. No.

13 Q. -- in any way, shape or form?

14 MR. HENDRICKS: I think he just answered  
15 your question.

16 Q. Okay. He said no.

17 Let me direct your attention to the sentence,  
18 "Benspyrene and 'a benspyrene,' both carcinogens, were  
19 identified in the distillate." Do you see where --

20 A. Distillate of what?

21 Q. Yes? Do you know what that is, sir?

22 MR. REILLY: He answered your question. I  
23 think you guys are talking over one another. Would you read  
24 the question back?

25 MR. WILNER: I can hear him. Let me conduct

1 this examination.

2 Q. Do you know what is meant by the sentence,  
3 "Benzopyrene and 'N-benzopyrene,'" --

4 A. Yes.

5 Q. -- "both carcinogens, were identified in the  
6 distillate"?

7 MR. SCHROEDER: Objection.

8 MR. HENDRICKS: Objection.

9 Q. All right. Strike that question. I'm going to  
10 ask you another one, okay?

11 A. Okay.

12 Q. As of 1953, were you aware from any source of  
13 whether benzopyrene and N-benzopyrene had been identified in  
14 the distillate of tobacco smoke?

15 A. No.

16 Q. And is your answer -- do I fairly understand you  
17 that you are of the belief that such compounds had not been  
18 identified in the distillate of tobacco smoke?

19 A. Yes, that's correct.

20 MR. SCHROEDER: Objection.

21 Q. Did you know whether or not the compounds  
22 benzopyrene and N-benzopyrene were carcinogens whether or  
23 not they had been identified in cigarette smoke?

24 A. Yes, I'd known them to be carcinogenic.

25 Q. And would it have been important to you to know

1 in 1953, when the meeting occurred at the Plaza Hotel,  
2 whether or not carcinogenic compounds had been identified in  
3 cigarette smoke?

4 MR. SCHROEDER: Objection.

5 A. Yes.

6 Q. And you will confirm for me, Dr. Tucker, that if  
7 such compounds had been identified in the laboratories of  
8 R.J. Reynolds Tobacco Company, that information was not  
9 shared with the personnel in the TIRC and in the Plaza  
10 Hotel?

11 MR. SCHROEDER: Objection.

12 MR. REILLY: Object to the form of the  
13 question.

14 Q. Is that right?

15 MR. HENDRICKS: Same objection.

16 Q. You can answer.

17 A. That's true.

18 Q. Okay. When the researchers were selected on the  
19 Scientific Advisory Board, did you personally assign  
20 projects, research projects, for them?

21 A. No.

22 Q. Was that assigned through the scientific  
23 director, Dr. Little?

24 A. Yes.

25 Q. Did you ever discuss with Dr. Little whether a

1 project should be funded to discover whether or not  
2 carcinogens existed in cigarette smoke?

3 A. I may have. I don't know.

4 Q. And if you may have, did Dr. Little consent to  
5 fund such a project?

6 MR. SCHROEDER: Objection.

7 MR. HENDRICKS: Objection.

8 MR. REILLY: Object; calls for speculation.

9 A. Now, I don't recall.

10 Q. Okay. Did you ever go to the director or the  
11 president of Brown & Williamson Tobacco Company and ask that  
12 the research department be given authority to undertake the  
13 analysis of whether or not carcinogenic compounds occurred  
14 in cigarette smoke?

15 A. We were doing that kind of work anyway.

16 Q. What kind of work?

17 A. The analysis of tobacco smoke.

18 Q. Okay. Well, when were you doing that kind of  
19 work?

20 A. In 1953 and subsequently.

21 Q. So did you find benzopyrene in the cigarette  
22 smoke --

23 A. No.

24 Q. -- that you looked at?

25 Would it have been important for you, as a

1 researcher at Brown & Williamson, to have known how other  
2 researchers had located benzopyrene in cigarette smoke?

3 MR. SCHROEDER: Objection.

4 MR. REILLY: Calls for speculation.

5 MR. HENDRICKS: Objection.

6 A. Yes.

7 Q. Did you, at any time prior to the -- prior or  
8 after the meeting of 1953, prepare an analysis of the cancer  
9 research that had been done by others and published in the  
10 literature?

11 A. No, I can't recall doing that.

12 Q. Let me direct your attention to the bibliography  
13 at the back of the document that I just handed you, which  
14 begins on page 16. Let me direct your attention -- do you  
15 have page 16 and following?

16 A. Yes.

17 Q. Let me direct your attention to reference  
18 No. 45 entitled "Ochsner and DeBakey, Archives of Surgery  
19 42,209, 1941." Do you see that?

20 A. I see it, yes.

21 Q. Now, are you aware, sir, of the contents of the  
22 publication by Ochsner and DeBakey that is cited by the R.J.  
23 Reynolds researcher in this secret document?

24 MR. SCHROEDER: Objection.

25 MR. REILLY: Object to the form of the

1 question.

2 MR. HENDRICKS: Objection.

3 Q. Did you get my question?

4 A. No.

5 Q. All right. Are you aware of the contents of the  
6 publication which is cited in reference No. 45 by this R.J.  
7 Reynolds researcher, Claude Teague, on page 17 of this  
8 secret document?

9 MR. SCHROEDER: Objection.

10 MR. REILLY: Objection.

11 MR. HENDRICKS: Same objection.

12 Q. Did you understand my question? Dr. Tucker, are  
13 we on the same page? I want to help you along and move it  
14 along. Did you understand -- my question was only, did you  
15 know about the contents of the Ochsner and DeBakey 1941  
16 paper?

17 MR. SCHROEDER: Objection.

18 A. No, I can't recall that I did.

19 Q. Okay. And is that true up to today, sir, as you  
20 have -- to the best of your recollection, you have not  
21 become aware of the contents of the publication that  
22 Dr. Teague of R.J. Reynolds cited on page 17, reference 45?

23 A. No.

24 Q. I want you, Doctor, to assume that on that -- in  
25 that reference, which is a reference to a paper called

1 "Carcinoma of the Lung" by Alton Ochsner and Michael  
2 DeBakey, published in 1941 in the Archives of Surgery, that  
3 the authors stated at page 221, "It is our definite  
4 conviction that the increase in the incidence of pulmonary  
5 carcinoma is due largely to the increase in smoking,  
6 particularly cigarette smoking, which is universally  
7 associated with inhalation."

8 Now, assuming that to be the case in 1941, were  
9 you aware that that sentiment had been expressed by doctors  
10 of the caliber of Ochsner and DeBakey as early as 1941?

11 MR. SCHROEDER: Objection to the form of the  
12 question.

13 MR. REILLY: Objection.

14 A. No, I was not aware of it.

15 Q. Would that have been something that you would  
16 have wanted to read and consider carefully before stating in  
17 any meetings in 1943 (sic) whether or not there was any  
18 proof that cigarette smoking caused cancer?

19 MR. SCHROEDER: Objection.

20 MR. REILLY: Objection; form of the  
21 question.

22 MR. HENDRICKS: Objection.

23 A. Yes.

24 Q. And would you have wanted to see the paper  
25 entitled "Survey of Cancer Research with Emphasis on

1 Possible Carcinogens" done by a researcher at the R.J.  
2 Reynolds Tobacco Company so you could read it carefully and  
3 peruse it and look at the references before giving opinions  
4 and giving speeches of whether cigarettes caused cancer?

5 MR. SCHROEDER: Objection.

6 MR. HENDRICKS: Objection.

7 MR. REILLY: Objection to the form of the  
8 question; calls for speculation on the part of the witness.  
9 He hasn't seen the Ochsner and DeBakey article and he hasn't  
10 had an opportunity to read the 19-page report of Claude  
11 Teague.

12 Q. Doctor, my only question is, would you have liked  
13 to see the report and have an opportunity to look at it and  
14 read it before making statements about the scientific  
15 issues?

16 MR. SCHROEDER: Objection.

17 MR. REILLY: Objection; calls for  
18 speculation on the part of the witness. If he doesn't know  
19 what's in it, how can he --

20 MR. WILNER: Well, I think you're making now  
21 more than an objection, counselor. I caution you under the  
22 Florida rules it's impermissible.

23 Q. Can you answer my question?

24 MR. SCHROEDER: Objection.

25 A. I would say yes.

1 Q. Yes, you'd like to see it; is that right?

2 A. Yes.

3 Q. Now, you were asked by attorneys for Brown &  
4 Williamson whether you, by virtue of being an adviser to the  
5 TIRC, set in motion a method by which scientists would be  
6 doing research on cigarette-related issues. Is that a fair  
7 statement?

8 A. Yes.

9 Q. And you -- and we've previously talked about your  
10 efforts and your committee's efforts to select a director, a  
11 scientific director, for the Scientific Advisory Board of  
12 the TIRC --

13 A. Yes.

14 Q. -- right?

15 Did you have any -- you personally have any --  
16 have any involvement in the selection of the Scientific  
17 Advisory Board members?

18 A. Yes.

19 Q. And do you recall who -- what was the membership  
20 of the Scientific Advisory Board at the time the TIRC was  
21 initiated?

22 A. Well, they weren't -- the Scientific Advisory  
23 Board had not been appointed yet.

24 Q. I understand that and I didn't mean to suggest.  
25 But when they were appointed in the formative months of the

1 TIRC, you were aware of who they were?  
2 A. Yes.  
3 Q. And was one of the members of the TIRC Dr. Paul  
4 Kotin?  
5 A. Yes.  
6 Q. Did you know Dr. Kotin?  
7 A. Yes.  
8 Q. And did you understand Dr. Kotin to be an eminent  
9 and respected scientist?  
10 A. Yes.  
11 Q. Was Dr. Kotin one of the people who did research  
12 for the cigarette -- for the TIRC on matters of cigarettes  
13 and health?  
14 MR. SCHROEDER: Objection.  
15 A. I wouldn't know that detail.  
16 Q. What was Dr. Kotin's responsibility as a member  
17 of the Scientific Advisory Board?  
18 A. The same as all the other members.  
19 Q. Which was?  
20 A. To select and recommend the support of research  
21 proposals.  
22 Q. And did some of those research proposals also  
23 involve people who were themselves members of the Scientific  
24 Advisory Board?  
25 A. It might well have.

1 Q. Now, I think you said -- I want to make sure I  
2 understand this. Did you assign to the Scientific Advisory  
3 Board the responsibility to test Brown & Williamson  
4 cigarettes to see if they were safe for human consumption?

5 MR. SCHROEDER: Objection.

6 A. I don't recall that.

7 Q. Well, certainly they were not told, as I  
8 understand, the constituents or ingredients of Brown &  
9 Williamson cigarettes in order to make any tests on them,  
10 correct?

11 A. Correct.

12 MR. REILLY: Object to the form of the  
13 question.

14 Q. You do not recall giving the Scientific Advisory  
15 Board the specific instructions to test Brown & Williamson  
16 cigarettes to see if they were safe for human consumption,  
17 true?

18 A. True.

19 Q. Did you -- regardless of whether you had given  
20 the Scientific Advisory Board the assignment, can you point  
21 to any specific tests or recommendations that came from the  
22 Scientific Advisory Board that affected the design of Brown  
23 & Williamson products?

24 MR. HENDRICKS: Object to the form.

25 A. No.

1 Q. Were you aware of whether Dr. Kotin published a  
2 paper in the 1950s that stated that cigarettes caused  
3 cancer?

4 MR. HENDRICKS: Object --

5 A. No.

6 MR. HENDRICKS: -- as we are now apparently  
7 going to get off into an area involving Dr. Kotin's  
8 professional background. It's entirely outside the scope of  
9 my examination of Dr. Tucker, it's -- I would object to it.

10 Q. Were you aware, Doctor, that was my question.  
11 You said no?

12 A. No.

13 Q. Did you make it a point to read the publications  
14 of the people in the Scientific Advisory Board when they  
15 published on the issue of cigarettes and disease?

16 A. No.

17 Q. I have a few copies of this one. Let me hand you  
18 a periodical -- a publication -- I have a few of these;  
19 you're welcome to them -- entitled "The Role and Action of  
20 Environmental Agents in the Pathogenesis of Lung Cancer,  
21 Roman numeral II, Cigarette Smoke," by Paul Kotin, M.D. and  
22 Hans L. Falk, M.D. Do you see that?

23 A. Yes. It says Hans Falk, Ph.D.

24 Q. Ph.D. You've got better eyes than I do. I  
25 appreciate that.

1 Did you know who Dr. Falk was?

2 A. I recognize the name, but I can't...

3 Q. But you'll confirm that Dr. Kotin was one of the  
4 original members of the Scientific Advisory Board --

5 A. Yes.

6 Q. -- is that correct?

7 Let me direct your attention to page 257, under  
8 the first paragraph beginning "Comment." Let me read you  
9 the statement and then ask whether you agree or disagree.  
10 Under "Comment," the first paragraph, the statement is made  
11 by Dr. Kotin, member of the Scientific Advisory Board of  
12 TIRC: "The statement recently made by a study group  
13 appointed to examine the scientific evidence on the effects  
14 of tobacco smoking on health, to the effect that, quote, the  
15 sum total of scientific evidence establishes beyond  
16 reasonable doubt that cigarette smoking is a causative  
17 factor in the rapidly increasing incidence of human  
18 epidermoid carcinoma of the lung, end quote, represents a  
19 more or less universally accepted viewpoint with which we  
20 concur."

21 Do you see that sentence?

22 A. Yes, I see it.

23 Q. Did Dr. Kotin ever address the TIRC in your  
24 presence and state these words or words to that effect that  
25 he concurred with the pronouncements of the Medical Research

1 Council of Great Britain to the effect that cigarette  
2 smoking was a causative factor in cancer of the lung?

3 MR. SCHROEDER: Objection.

4 MR. HENDRICKS: Objection.

5 Q. Doctor, I'm only asking you whether Dr. Kotin  
6 ever addressed the Scientific Advisory Board in your  
7 presence.

8 A. No.

9 Q. All right. And did you ever ask Dr. Kotin what  
10 his views were on whether cigarettes caused cancer?

11 A. No.

12 Q. All right. Did -- the views of Dr. Kotin, were  
13 they given to the public through any pronouncement of the  
14 TIRC --

15 MR. HENDRICKS: Objection.

16 MR. SCHROEDER: Objection.

17 Q. -- to your knowledge?

18 A. No.

19 Q. The scientific -- the White Paper on the  
20 scientific perspective on the cigarette controversy was a --  
21 was written in 1954 and distributed widely, correct?

22 A. Yes.

23 MR. SCHROEDER: Objection.

24 Q. And to your knowledge, was a paper issued in 1959  
25 which told the public that an eminent member of the

1 Scientific Advisory Board believed that cigarettes caused  
2 cancer?

3 MR. SCHROEDER: Objection.

4 A. What's the question?

5 Q. Was there ever a White Paper that said Dr. Kotin,  
6 our own man, believes it?

7 MR. REILLY: Objection to the form of the  
8 question.

9 MR. SCHROEDER: Objection.

10 A. No.

11 Q. Why not?

12 MR. SCHROEDER: Objection.

13 MR. REILLY: Object; calls for speculation.

14 A. Because his statement was from much earlier.

15 Q. His statement was from earlier?

16 MR. REILLY: I think he said the statement  
17 was from earlier.

18 A. It was not necessarily applicable to the -- to  
19 that time.

20 Q. His statement, let me represent to you, appeared  
21 in a publication which was received for publication May 15,  
22 1959, published sometime in 1960.

23 Now, you were at Brown & Williamson as of May 15,  
24 1959, right?

25 A. Yes.

1 Q. Okay. So as of May 15, 1959, did Brown &  
2 Williamson cause to be published anywhere a statement to the  
3 effect that a scientist chosen by the tobacco industry as  
4 being an eminent scientist in the field believed and stated  
5 that cigarettes caused cancer?

6 MR. REILLY: I have to object. Counsel's  
7 reference to when the matter was submitted for publication  
8 is a year prior to its actual publication. I'm not sure  
9 whether he was even employed at Brown & Williamson at the  
10 time. It's not fair to the witness.

11 MR. WILNER: A speaking objection.

12 MR. REILLY: It is because your question was  
13 so blatantly inaccurate in comparison to what the actual  
14 facts as reflected in the document, the exhibit you  
15 submitted, are.

16 MR. WILNER: We'll try to get through  
17 despite you, counsel.

18 MR. REILLY: You know, I never make these  
19 things personal. I don't know why you do.

20 MR. WILNER: I'm not making it personal.  
21 I'm asking that you abide by the rules, state your objection  
22 and not try to tell the witness what to say.

23 MR. REILLY: And I'm not trying to tell the  
24 witness anything. I'm only working on the nature of your  
25 question.

1 Q. Dr. Tucker, do you understand my question?  
2 A. Yes.  
3 Q. All right. Did Brown & Williamson ever tell  
4 anybody that Dr. Kotin believed that cigarettes caused  
5 cancer?  
6 A. Not to my knowledge.  
7 Q. Do you know whether Brown & Williamson ever  
8 invited Dr. Kotin to the offices of Brown & Williamson while  
9 you were there?  
10 A. No.  
11 Q. Did you -- were you aware that Dr. Kotin was  
12 preparing this manuscript which he submitted on May 15,  
13 1959?  
14 A. No.  
15 Q. So the TIRC funded research on cigarettes and  
16 disease, correct?  
17 A. Yes.  
18 Q. And the TIRC paid Dr. Kotin to be on the  
19 Scientific Advisory Board, right?  
20 A. Yes.  
21 Q. And Dr. Kotin was held out to the world by the  
22 TIRC as an eminent and respected scientist who would examine  
23 the question of whether cigarettes caused cancer, right?  
24 MR. HENDRICKS: Objection to form.  
25 MR. SCHROEDER: Object to form.

1 Q. Right?

2 A. Yes.

3 Q. Okay. And then when Dr. Kotin did his research

4 and found out and published that cigarettes caused cancer,

5 did TIRC or the cigarette industry or Brown & Williamson

6 tell the public?

7 MR. SCHROEDER: Objection.

8 MR. REILLY: Object to the form of the

9 question.

10 A. Not to my knowledge.

11 Q. And the question, then, I have for you, sir, is

12 why not?

13 MR. SCHROEDER: Same objection.

14 MR. REILLY: Calls for speculation on the

15 part of the witness.

16 Q. Do you know why not?

17 A. No.

18 Q. If it had been up to you, sir, and you had known

19 Dr. Kotin's work, would you have informed the public?

20 MR. SCHROEDER: Objection.

21 MR. HENDRICKS: Objection to form.

22 MR. REILLY: You're asking him to

23 speculate.

24 Q. Would you?

25 MR. REILLY: Same objection.

1 Q. You would have, wouldn't you?

2 MR. SCHROEDER: Objection; badgering.

3 MR. HENDRICKS: Objection.

4 MR. REILLY: Objection; argumentative.

5 MR. PARRISH: Objection.

6 MR. HENDRICKS: I think we've gotten to the

7 point where you're well over your three and half hours.

8 MR. WILNER: We don't have an answer to the

9 question, counsel. Hold on a second.

10 Q. Would you have told the public had you known

11 about this?

12 MR. SCHROEDER: Same objection.

13 MR. REILLY: Same objection; speculation,

14 and it's now been asked four times.

15 A. I believe so.

16 Q. Thank you, Doctor.

17 MR. WILNER: All right. We'll take a

18 break. Now you can make your speech.

19 (2:28 BREAK 2:58. Messrs. Parrish and

20 Jay were not present after the break.)

21 MR. HENDRICKS: Based on your inability to

22 give us any assurance of when you're going to finish, and

23 based on my calculations that we have far exceeded the three

24 and a half hours which you estimated yesterday, and based on

25 the fact that Dr. Tucker has been sitting here for more than

1 five and a half hours, the fact that he is 82 years old, and  
2 that the questioning in this matter has been intensive,  
3 repetitive and tiring, it's our inclination and, in fact,  
4 judgment that we should discontinue the deposition at this  
5 time and reschedule.

6 Doctor, let me ask you, how are you feeling?  
7 Tired?

8 THE DEPONENT: Little weary.

9 MR. HENDRICKS: All right.

10 MR. WILNER: You're terminating the  
11 deposition?

12 MR. HENDRICKS: Yes.

13 MR. VENABLE: You're terminating it or  
14 you're trying to continue it, or exactly what is your  
15 position? It's very important.

16 MR. REILLY: I've already made objections  
17 that you guys have gone well beyond the scope of redirect  
18 examination.

19 MR. VENABLE: I understand the objection.

20 MR. REILLY: So whether or not it goes  
21 forward at a later date will probably be subject to the  
22 court's determination as to whether or not you should be  
23 permitted to ask further questions, so I don't want to have  
24 an assurance that there is going to be another day where you  
25 guys get to ask more questions. I've already made my

1 objections in that regard.

2 MR. VENABLE: I understand.

3 MR. WILNER: Are you terminating the  
4 deposition under a Florida rule of civil procedure?

5 MR. HENDRICKS: I'll just say what I have  
6 said, that based upon the fact that you have deprived us of  
7 our understanding that we could proceed -- we cannot now  
8 precede with our video deposition today; it would be  
9 virtually physically impossible. It is now three o'clock in  
10 the afternoon. You have far exceeded the three and a half  
11 hours. We've been very lenient and allowing you  
12 extraordinary latitude in conducting this discovery  
13 deposition.

14 Based on the fact that Dr. Tucker is obviously  
15 tired, as he indicates, an elderly gentleman, we're entitled  
16 to proceed under circumstances where Dr. Tucker can try to  
17 address these issues when he's fresh and in an articulate  
18 fashion, and we've reached the point where that's not  
19 possible, and so we are discontinuing proceedings. I don't  
20 want to put too fine a procedural point on it at this time,  
21 and I would adopt what counsel has said in that regard.

22 MR. VENABLE: May I point out that the  
23 estimate of three and a half hours was for my examination as  
24 a result of your direct examination. I never made any  
25 representation as to what Mr. Wilner would take, nobody

1 would do that, so I just want to make it clear that that's  
2 what I told you.

3 MR. HENDRICKS: Okay. I hear you. Let me  
4 just say this, then. When I spoke to you gentlemen, you  
5 were standing together and you spoke as if one voice was  
6 speaking and estimating that your examination would require  
7 an additional three and a half hours. Further, let me refer  
8 to page 128 of the transcript of yesterday's proceeding,  
9 where you, Mr. Venable, said, "Doctor, we" -- that's the  
10 first-person plural -- "have about three and a half hours to  
11 go yet."

12 For you now to take the position, counsel, that  
13 when you said "we" when you really meant "I," is  
14 fundamentally inconsistent with the representation you made  
15 to me outside of this room yesterday and inconsistent with  
16 the transcript of the proceeding yesterday.

17 MR. VENABLE: I'm not going to argue.

18 MR. WILNER: It's immaterial. The cigarette  
19 industry knows well how to take long depositions, and if you  
20 want to begin putting time limits on depositions, I'll be  
21 delighted to do that with you one day.

22 In any case, counsel has announced the  
23 termination of this deposition over our objection and my  
24 belief that I have important questions to ask. However, in  
25 view of that announcement, then we ask that this deposition

1 be concluded and signed by the witness so that what has been  
2 done so far will be usable.

3 MR. VENABLE: We do not have any further  
4 questions --

5 MR. WILNER: We don't have further  
6 questions.

7 MR. VENABLE: -- given that announcement.

8 MR. WILNER: In view of counsel's statement  
9 that he will not permit further questions on our behalf, we  
10 do not have further questions. Therefore, our deposition is  
11 terminated.

12 MR. VENABLE: It's concluded.

13 MR. WILNER: Concluded. Do you have  
14 questions, counsel?

15 MR. HENDRICKS: No, I don't.

16 MR. SCHROEDER: Wait a minute. Wait a  
17 minute. Wait a minute. For the record, I am not going to  
18 agree to that because, as I understand it, the witness is  
19 tired and incapable of proceeding at this point.

20 MR. VENABLE: Well, we passed the witness.

21 MR. SCHROEDER: I understand that. I also  
22 understand the witness is saying he's not available. So I'm  
23 not agreeing to your last statement.

24 MR. VENABLE: I understand, counsel, but the  
25 assurance from Brown & Williamson to my office is that this

1 gentleman will be available tomorrow as well, so if you want  
2 to conduct examination tomorrow, we can suspend until  
3 tomorrow. We are passing the witness at this point. We  
4 intend to continue day to day as our notice sets forth. So  
5 if you wish to question -- if he's too tired today, we  
6 certainly understand. We were assured by Brown & Williamson  
7 that this witness would be available at least through  
8 Wednesday.

9 MR. HENDRICKS: My understanding is that's  
10 simply not accurate.

11 MR. VENABLE: Well, I've got a letter, so it  
12 doesn't --

13 MR. HENDRICKS: You've written a letter in  
14 which you characterized your understanding of the  
15 agreement. My understanding is that nobody on the Brown &  
16 Williamson side has agreed to any proceedings on Wednesday.

17 MR. VENABLE: Oh, okay.

18 MR. HENDRICKS: Five minutes ago, you-all  
19 took the position that you had some period of time to ask  
20 additional questions of Dr. Tucker and that you could give  
21 us no assurance of how long that was going to be. From my  
22 point of view, that could be all day today, that could be  
23 all day tomorrow. It's simply incompatible with  
24 Dr. Tucker's physical interests, and we're not going to  
25 allow you to put this guy's physical health in jeopardy.

1           Then based upon our announcement that under those  
2   circumstances, given his health and the tiring nature and  
3   the fact that you've exceeded your three and a half hours by  
4   a substantial amount, we concluded that we would adjourn  
5   these proceedings. You thereafter announced that you passed  
6   the witness. Now, you pass the witness, if that's where we  
7   are right now, our view would be that, nevertheless, we have  
8   been deprived of our right to conduct our video deposition  
9   the day after you conducted your discovery deposition, that  
10   we're entitled to have a witness on a video deposition  
11   proceed on direct examination in a fresh and articulate  
12   fashion, and that is simply impossible. We cannot go  
13   forward tomorrow because we have not agreed to tomorrow and  
14   it's frankly inconsistent with obligations that counsel  
15   have.

16                   MR. WILNER: Reschedule your video whenever  
17   you want.

18                   MR. VENABLE: I want to make clear that we  
19   have no objection to you rescheduling your video at a time  
20   when the witness is fresh. What I want to make clear is  
21   that we are passing this witness, and if there are no  
22   questions pending, the deposition is concluded. It is not  
23   terminated. It is not continued. This deposition is  
24   concluded. We'll ask the court reporter to prepare the  
25   transcript and submit it for signature. The witness is

1 passed.

2 MR. REILLY: As so often happens, lawyers in  
3 deposition simply don't agree.

4 MR. VENABLE: Well, that's fine. That is  
5 fine. We're going to type it up and we're going to ask the  
6 witness to sign.

7 MR. SCHROEDER: I understand that's your  
8 position. I don't agree with that. And if we need to go  
9 see the judge and be back here, then -- but I disagree that  
10 the record's closed. On that, I think we have a  
11 disagreement.

12 MR. VENABLE: Mr. Tucker --

13 THE DEPONENT: Yes.

14 MR. VENABLE: -- would you be willing to  
15 appear for a deposition tomorrow?

16 MR. REILLY: Well, that doesn't matter.

17 MR. VENABLE: That's fine, counsel. Let the  
18 witness answer the question.

19 MR. REILLY: He's not under oath anymore.

20 MR. VENABLE: Yes, he is.

21 MR. HENDRICKS: This record's been closed.

22 MR. VENABLE: Will you appear for deposition  
23 tomorrow or Thursday?

24 MR. REILLY: Well, I can't be here tomorrow  
25 or Thursday. The message I got was that the deposition --

1 plus it's been noticed umpteen gillion times -- was going to  
2 occur yesterday and today, and I scheduled yesterday and  
3 today for this task.

4 MR. VENABLE: I understand, counsel. I'm  
5 asking the witness right now. We'll talk about you-all's  
6 problems in just a minute.

7 MR. HENDRICKS: Let me also say that my  
8 clear understanding was that your discovery deposition was  
9 yesterday and that we be given a fair opportunity to begin  
10 our video deposition today. Because of your behavior, that  
11 right that we had under that understanding has been  
12 completely obliterated. I cannot be here tomorrow, nor can  
13 Mr. Pauze.

14 MR. VENABLE: Mr. Tucker, can you be here  
15 tomorrow?

16 THE DEPONENT: No.

17 MR. VENABLE: Can you be here on Thursday?

18 THE DEPONENT: No.

19 MR. VENABLE: Did anyone from Brown &  
20 Williamson contact you and determine whether or not you  
21 would be available on Wednesday to continue your  
22 deposition?

23 THE DEPONENT: No.

24 MR. REILLY: He's not under oath on  
25 questioning like this.

1 MR. WILNER: All right. Well, we'd like  
2 this deposition typed, submitted to the witness for his  
3 signature, if he chooses to do so, make any corrections he'd  
4 like, and we'll do what we can with it.

5 (Deposition concluded at 2:55 p.m. on  
6 Tuesday, July 29, 1997.)  
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REPORTER'S CERTIFICATE

STATE OF KENTUCKY       )  
                                  ) SS.  
COUNTY OF MADISON     )

I, Sandra L. Allyn, Court Reporter and Notary Public in and for the State of Kentucky at Large, do hereby certify that the facts as stated by me in the caption hereto are true; that the foregoing answers in response to the questions as indicated were made before me by the deponent hereinbefore named, after said deponent had first been duly sworn to testify the truth, and were thereafter reduced to computer-aided transcription by me and under my supervision; and that the same is a true and accurate transcript of the proceedings to the best of my ability.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have affixed my signature and seal this 31st day of July, 1997.

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